CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

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Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 134

COUNTRY OF ORIGIN MARKING GUIDANCE FOR CONTAINERS OF IMPORTED FRUIT JUICE CONCENTRATE

(T.D. 97–79)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The purpose of this document is to remind the public of the existing Customs Service's interpretation of the application of the country of origin marking law to imported fruit juice concentrate. Customs has previously published guidance on application of the marking law to imported juice concentrate in Treasury Decision (T.D.) 89–66. In recognition of the fact that accounting for all minor foreign sources on the label may make compliance with the marking law prohibitively expensive, fruit juice processors have been permitted to comply with marking requirements by "major supplier marking." Customs permits "major supplier marking" as an acceptable method of compliance. Processors may list up to ten countries if they account for at least 75 percent of foreign concentrate used. Additionally, the sources listed on a juice container must indicate the sources actually used in that lot, not the sources used in a representative past importing period. The full name of the country of origin must be used unless Customs has authorized abbreviations which unmistakably reflect the country of origin to the ultimate purchaser.

FOR FURTHER INFORMATION CONTACT: David Cohen, Special Classification and Marking Branch (202–482–6980).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In accordance with 19 U.S.C. 1304, and 19 CFR Part 134, Customs ensures that imported fruit juice concentrate entering the U.S. in large containers, e.g., tanker cars and multi-gallon drums, is properly marked to show country of origin. However, the country of origin mark-

ing requirements set forth in this document are those pertaining to labeling that must appear on packages of concentrated or reconstituted fruit juice containing imported concentrate that reach ultimate purchasers. The purpose of this document is to remind the public of these requirements.

Customs Service Decision (C.S.D.) 85–47 (Headquarters Ruling Letter (HRL) 728557, dated September 4, 1985) held that containers of orange juice in frozen concentrated or reconstituted forms which contain imported concentrate, must be marked on the labels with the foreign country of origin of the products. This decision was based on the determination that the imported foreign orange juice concentrate used in the production of frozen concentrated or reconstituted orange juice is not substantially transformed after undergoing further processing in the U.S., including blending with other batches of orange concentrate, addition of water, oils and essences, pasteurization or freezing, and repacking. Customs determined that the frozen concentrated or reconstituted orange juice did not emerge from the processing as a new article with a new name, character, and use. *United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267, (C.A.D. 98) (1940).

By a notice published in the Federal Register on July 30, 1986 (51 FR 27195), Customs announced that the country of origin marking requirements of orange juice set forth in C.S.D. 85–47, later upheld substantively in *National Juice Products Association v. United States*, 10 Ct. Int'l Trade 48, 628 F. Supp. 978 (1986), were extended to include all other imported fruit juice concentrate which undergoes processing in the U.S. similar to that performed on orange juice concentrate. Therefore, all frozen concentrated or reconstituted fruit juices made with foreign concentrate processed in a manner similar to that described in C.S.D. 85–47 must be marked to indicate the country of origin of the foreign concentrate. This position has been in effect since February 1, 1987. T.D. 86–120 (51 FR 23045 (June 25, 1986)).

Customs does not require "all sources marking" on containers of juice made with imported concentrate. Customs allows "major supplier marking" as an acceptable method of compliance for marking of imported juice concentrate. Major supplier marking permits processors to list up to ten foreign sources to account for 75 percent or more of imported concentrate. Customs concluded from previous consultations with those in the juice industry that in the majority of circumstances, five or fewer sources will account for at least 75 percent of foreign concentrate present in a lot, and that in virtually all cases, ten or fewer sources will account for 75 percent of the foreign concentrate. If ten sources do not amount to 75 percent of foreign concentrate, then all foreign sources must be listed. For purposes of complying with this requirement, "lot" is defined as it is in Food and Drug Administration regulations, 21 CFR 146.3(h)(1)(i), as "[a] collection of primary containers or units of the same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade."

"Manufactured or packed under similar conditions" is defined, for purposes of compliance with 19 U.S.C. 1304, as all the containers or units containing the same blend of foreign concentrates.

The listing of foreign sources must consist of the countries contributing the greatest percentages adding up to at least 75 percent. For example, processors may not skip over an "undesirable" source contributing 10 percent in order to list the next two "unobjectionable" sources contributing five percent each. However, the order within the list need not change based on ranking. For example, if a processor is blending foreign concentrates from two countries contributing 60 and 15 percent, respectively, and the two countries reversed proportions, the same label could be used on both lots.

In addition, Customs reminds the public that section 134.45, Customs Regulations (19 CFR 134.45), provides that:

> Except as otherwise provided in * * * this section, the markings required by this part shall include the full English name of the country of origin, unless another marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs * * *.

Only authorized abbreviations which unmistakably indicate the name of a country, such as "Gt. Britain" for "Great Britain' or "Luxemb" and "Luxembg" for "Luxembourg" are acceptable and variant spellings which clearly indicate the English name of the country of origin, such as "Brasil" for "Brazil" and "Italie" for "Italy," are acceptable. Rulings may be obtained from the Customs Service regarding what country abbreviations are acceptable for purposes of compliance with the marking statute. Customs notes that it is incorrect to abbreviate the word "concentrate" to "conc" when disclosing the origin of juice concentrate since the ultimate purchaser will not unmistakably identify "conc" as an abbreviation for the word "concentrate."

SUMMARY

Imported fruit juice concentrate which is imported into the U.S. and used in the production of concentrated or reconstituted fruit juice is not substantially transformed after undergoing further processing in the U.S. Accordingly, all such imported concentrate is subject to the country of origin marking requirements of 19 U.S.C. 1304, and 19 CFR Part 134. Processors may use "major supplier marking" in preparing labels for containers of juice made with imported concentrate. If a processor obtains 75 percent or more of the imported concentrate used in a particular lot from ten or fewer countries, only those countries need be revealed. The full name of the country of origin must be used unless Customs has authorized abbreviations which unmistakably indicate the country of origin of the concentrate to the ultimate purchaser.

DRAFTING INFORMATION

The principal author of this document was David E. Cohen, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Date: September 17, 1997.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Published in the Federal Register September 23, 1997 (62 FR 49597)]

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19 CFR Parts 7, 10, 148, and 178

(T.D. 97–75)

RIN 1515–AB14

DUTY-FREE TREATMENT OF ARTICLES IMPORTED FROM U.S. INSULAR POSSESSIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the Federal Register which set forth final amendments to the Customs Regulations to clarify and update the legal requirements and procedures that apply for purposes of obtaining duty-free treatment on articles imported from insular possessions of the United States other than Puerto Rico. The correction involves the control number assigned by the Office of Management and Budget in connection with the approval of the collection of information provided for in the final regulations.

EFFECTIVE DATE: This correction is effective October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Monika Rice, Office of Regulations and Rulings (202–482–7049).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 3, 1997, Customs published in the Federal Register (62 FR 46433) as T.D. 97–75 a final rule document setting forth amendments to the Customs Regulations to clarify and update the legal requirements and procedures that apply for purposes of obtaining

duty-free treatment on articles imported from insular possessions of the United States other than Puerto Rico. That final rule document provided for an October 3, 1997, effective date for the regulatory amendments contained therein.

The amendments in T.D. 97–75 included an update of the list of information collection approvals under the Paperwork Reduction Act contained in § 178.2 of the Customs Regulations (19 CFR 178.2). Although the discussion of the Paperwork Reduction Act in the SUPPLEMENTARY INFORMATION portion of T.D. 97–75 correctly set forth the control number assigned by the Office of Management and Budget (OMB) as 1515–0200, the amendment to § 178.2 incorrectly listed the OMB control number as 1515–0055. This document corrects this error.

CORRECTION TO THE FINAL REGULATIONS

On page 46443, in the table under § 178.2, in the column headed "OMB control number", the entry "1515–0055" is corrected to read "1515–0200".

Dated: September 11, 1997.

HAROLD M. SINGER,
Chief,
Regulations Branch.

[Published in the Federal Register, September 19, 1997 (62 FR 49149)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 17, 1997.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN DURANT,
(for Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings.)

REVOCATION OF CUSTOMS RULING LETTERS RELATING TO THE USE OF FOREIGN-BASED TRUCKS IN INTERNATIONAL TRAFFIC

ACTION: Notice of revocation of ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103–182, 107 Stat. 2057) this notice advises interested parties that Customs is revoking all prior rulings inconsistent with its change in interpretation of the Customs Regulations regarding the admission into the United States of certain foreign-based trucks as instruments of international traffic. It is now Customs' position that whether the movement of such vehicles is considered to be international or domestic for purposes of the administration of section 123.14, Customs Regulations (19 CFR 123.14) is dependent upon the origin and destination of the merchandise carried. Such vehicles engaged, in whole or in part, in the carriage of merchandise originating in one country and terminating in another country shall be considered to be engaged in international traffic. In addition, the movement of such vehicles without a payload between two points in the same country shall not be considered a domestic movement. The benefit of this liberalization of current cabotage restrictions inures to both the United States and foreign trucking industries inas-

much as it allows more efficient and economical utilization of their respective vehicles both internationally and domestically. Notice of the proposed revocation was published June 18, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 24/25.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Entry Procedures and Carriers Branch, Office of Regulations and Rulings, 202–482–6940 (legal matters), or Thomas L. Wygant, Cargo Control, Office of Field Operations, 202–927–1167 (operational matters).

SUPPLEMENTAL INFORMATION:

BACKGROUND

On June 18, 1997, Customs published a notice in the CUSTOMS BULLETIN, Volume 31, Number 24/25, proposing to revoke all rulings inconsistent with its change in interpretation of the Customs Regulations regarding the admission into the United States of certain foreign-based trucks as instruments of international traffic. Customs invited comments on the correctness of the proposed revocation.

Section 141.4(a), Customs Regulations (19 CFR 141.4(a)), provides that entry as required by title 19, United States Code, § 1484(a) (19 U.S.C. 1484(a)), shall be made of all merchandise imported into the United States unless specifically excepted. Foreign-based trucks are not among those excepted items listed in § 141.4(b) and would therefore be subject to entry and payment of any applicable duty unless otherwise exempted by law or regulations.

Pursuant to 19 U.S.C. 1322, vehicles and other instruments of international traffic shall be excepted from the application of the Customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury. This statutory mandate pertaining to foreign-based trucks is implemented under § 123.14 of the Customs Regulations (19 CFR 123.14). Section 123.14(a) states that to qualify as instruments of international traffic, trucks having their principal base of operations in a foreign country must be arriving in the United States with merchandise destined for points in the United States, or arriving empty or loaded for the purpose of taking merchandise out of the United States.

Section 123.14(c), Customs Regulations, states that with one exception, a foreign-based truck admitted as an instrument of international traffic under § 123.14(a), shall not engage in local traffic in the United States. The exception, set out in § 123.14(c)(1), states that such a vehicle, while in use on a regularly scheduled trip, may be used in local traffic that is directly incidental to the international schedule. For purposes of § 123.14(c), Customs interprets the term "local traffic" as referring to the transportation of passengers or merchandise between any two points in the United States.

Section 123.14(c)(2), Customs Regulations, provides that a foreign-based truck trailer admitted as an instrument of international traffic

may carry merchandise between points in the United States on the return trip as provided in § 123.12(a)(2) which allows use for such transportation as is reasonably incidental to its economical and prompt departure for a foreign country.

In regard to these cabotage restrictions, Customs received a petition from the American Trucking Associations (ATA) requesting a change in Customs' interpretation of its regulations governing the use of foreign-based trucks in local traffic in the United States. This petition is the culmination of joint discussions beginning in July of 1994 between the ATA and the Canadian Trucking Association (CTA) to obtain mutually agreed upon parameters with respect to the liberalization of current truck cabotage restrictions in their respective countries.

Accordingly, it was proposed that for purposes of determining whether foreign-based trucks are engaged in "international" or "local" (i.e., domestic) traffc as those terms are used in § 123.14 and are therefore subject to the restrictions provided therein, Customs will look to the origin and destination of the merchandise carried rather than the actual transportation route of the merchandise on the trucks. Such vehicles engaged, in whole or in part, in the carriage of merchandise originating in one country and terminating in another country shall be considered to be engaged in international traffic. In addition, the movement of such vehicles without a payload between two points in the same country shall not be considered to be a local or domestic movement.

Eleven comments were received in response to the notice; nine expressed support for the proposal, one opposed it, and one supported the proposal only with respect to the movement of vehicles without a payload between two points in the same country. The essence of the comments and our responses follow:

Comment:

The adoption of the proposal reflects the spirit of binational cooperation necessary to provide for the integrated North American market place envisioned by the U.S.-Canada Free Trade Agreement and NAFTA. It would achieve a harmonization of the truck cabotage regulations administered by the respective customs services of the United States and Canada since Revenue Canada is prepared to adopt a truck cabotage reform policy to mirror that proposed by the U.S. Customs Service. Such harmonization will further facilitate the U.S.-Canada bilateral trade, now valued at approximately $300 billion annually of which nearly 70% is moved by truck, by eliminating the current confusion that exists with respect to the administration of the truck cabotage restrictions of both countries and fostering consistency and fairness in the treatment accorded the U S. and Canadian trucking industries in their cross-border operations.

Response:

Customs agrees. The proposal promotes international trade through the elimination of barriers, an objective also common to the U.S.-Canada Free Trade Agreement, NAFTA and the U.S.-Canada Accord on our

Shared Border, the latter of which was entered into by President Clinton and Canadian Prime Minister Chretien on February 24, 1995. The current truck cabotage provisions administered by both the U.S. and Canada, although similar in their respective regulatory language, are subject to disparate interpretations oftentimes yielding confusing varied results with respect to what truck movements are permitted on either side of the border. This source of consternation is routinely encountered by carriers, shippers, their customers, dispatchers, as well as the respective customs services of both countries. The proposal, as agreed upon by the national trade associations of the respective trucking industries of both countries, evidences their mutual intent to eliminate such confusion, ensures uniformity as well as fairness in cross-border trucking operations, and simplifies the degree of truck cabotage enforcement now sought by these trucking industries.

Comment:

By permitting the unrestricted repositioning of empty trailers, the efficient use of equipment in local pick-up and delivery operations, the switching of trailers between two drivers from the same company, and other normal carrier functions involving the movement of trucks between points within the United States, the proposal accurately reflects the realities of modern day trucking operations. The aforementioned movements are severely restricted and/or prohibited by Customs' current interpretation of its existing regulations which focuses on vehicular movement within the United States rather than the movement of merchandise in international trade. As a result, foreign-based trucks oftentimes must travel empty (i.e., "dead head") for many miles in order to maintain the integrity of their international route rather than being more efficiently used to shuttle international merchandise between points within the United States. Improved operational efficiencies such as this that will be permitted by the adoption of the proposal will not only eliminate the aforementioned "empty miles" but also will result in reduced traffic congestion, increased highway safety; reduced fuel wastage, and a more timely delivery service. The benefits of these improved operations will be further realized in financial savings for motor carriers, shippers and their customers.

Response:

Customs agrees. The proposal facilitates rather than impedes cross-border truck operations. The current protectionist interpretation of the truck cabotage regulations has inhibited the operational and economical well-being of the very industry these regulations were designed to protect. Customs has no interest in suppressing domestic motor carriers in the conduct of their business by interpreting its regulations to that industry's detriment, especially when the industry has made it clear that their financial welfare is dependent upon Customs changing its current interpretation in this matter.

Comment:

If the proposed change is adopted foreign-based trucks would be considered to be operating in international traffic, even when transporting cargo between points in the United States, as long as any part of the trip involved hauling cargo (e.g., a single parcel) loaded in one country and unloaded in another. Thus, a foreign-based truck would be permitted to make multiple pick-ups and deliveries in the United States so long as it carries any such foreign merchandise. The foreign merchandise carried by such a truck would therefore amount to a pretext or license to engage in extended operations in the United States thereby circumventing the applicable Customs entry and duty requirements.

Response:

It is Customs' intent that under this proposal the movement of a truck would be characterized as international if it were involved in any portion of a movement of merchandise in international traffic, *not* if any portion of the merchandise being transported in the truck were international in character. Thus, if any portion of the merchandise being transported in the truck is local in nature, the movement of the truck would be characterized as local regardless of the fact that it is simultaneously transporting merchandise which is international in nature. Consequently, the multiple domestic pick-up and delivery scenario contemplated by the above commenter would be beyond the scope of the proposal and would in fact constitute unlawful local traffic. For purposes of this proposal "local traffic" will include the transportation of merchandise between any two points in the United States when such merchandise has not had a prior movement from an origin (i.e., point of loading) outside the United States or will not be subsequently moved to a destination (i.e., delivery point) outside the United States.

Comment:

The adoption of the proposal would encourage the unlawful use of foreign drivers for U.S. domestic movements thereby resulting in job losses for U.S. drivers. Although the limitations on the permissible scope of foreign driver activities are enforced by the Immigration and Naturalization Service (INS), the current legal restrictions on domestic activities of foreign trucks and foreign drivers are roughly parallel. If the proposal is adopted, the legal restrictions on foreign trucks administered by Customs will be considerably less stringent than those on foreign drivers administered by the INS. This disparity will significantly increase unauthorized driver activity in the United States.

Response:

In view of Customs' intent in this proposal with respect to what will constitute local traffic for purposes of section 123.14, it is readily apparent that the adoption of the proposal will not reduce the restrictions on the use of foreign trucks in the United States to the degree contemplated by the commenter. Furthermore, the increased operational efficiency effected by the proposal will, in some cases, expedite the return of

a foreign driver to Canada. As noted by the commenter, foreign driver activity in this country is a matter within the purview of the INS. Customs will defer to that agency with respect to that issue.

Comment:

The proposed change in interpretation may only be accomplished in accordance with the requirements of the Administrative Procedures Act (5 U.S.C. 553) rather than the procedures set forth in 19 U.S.C. 1625(c)(1) since it is so at odds with the language of the existing regulatory language. Furthermore, Customs has failed to provide a meaningful explanation as to why it is changing its longstanding regulatory interpretation.

Response:

Customs disagrees. The proposal is not a notice of proposed rule making amending regulatory language for which publication and comment solicitation in the Federal Register is required pursuant to 5 U.S.C. 552(b). Rather, the proposal revokes prior administrative rulings that restrictively interpreted section 123.14 and is therefore exempt from such procedures pursuant to 5 U.S.C. 552(b)(3)(A). The proposal is, however, subject to publication and comment solicitation in the CUSTOMS BULLETIN pursuant to 19 U.S.C. 1625(c)(1), with which Customs has fully complied. This notice sets forth Customs' new position with respect to foreign-based trucks considered to be engaged in international traffic. Those vehicles not in accordance with this position are considered to be engaged in local traffic to which the current restrictions provided in the regulatory language of section 123.14(c)(1) and (2) will continue to apply. In regard to Customs' explanation as to why it is changing its longstanding interpretation in this matter, the above responses to the first two comments provide such an explanation.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103–182, 107 Stat. 2057) this notice advises interested parties that Customs is revoking all prior rulings inconsistent with its change in interpretation or the Customs Regulations regarding the admission into the United States of certain foreign-based trucks as instruments of international traffic. It is now Customs' position that whether the movement of such vehicles is considered to be international or domestic for purposes of the administration of section 123.14, Customs Regulations (19 CFR 123.14) is dependent upon the origin and destination of the merchandise carried. Such vehicles engaged, in whole or in part, in the carriage of merchandise originating in one country and terminating in another country shall be considered to be engaged in international traffic. In addition, the movement of such vehicles without a payload between two points in the same country shall not be considered a domestic movement.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 Part 177.10(c)(1)).

Dated: September 16, 1997.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF CUSTOMS RULING LETTER AND MODIFICATION OF MEMORANDUM RELATING TO DUTIABILITY UNDER 19 U.S.C. 1466

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of vessel repair ruling letter and modification of vessel repair memorandum.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the dutiability of a radar and satellite communications system under 19 U.S.C. 1466. Customs also is modifying a memorandum which involved a decision on a vessel repair petition submitted pursuant to 19 U.S.C. 1466 with respect to the dutiability of a satellite communications system. Notice of the proposed revocation was published on June 18, 1997 in the CUSTOMS BULLETIN, Volume 31, Number 24/25.

EFFECTIVE DATE: Vessel repair entries filed on or after December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, Entry Procedures and Carriers Branch, International Trade Compliance Division, (202) 482–6940.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 18, 1997, Customs published a notice in the CUSTOMS BULLETIN, Volume 31, Number 24/25, proposing to revoke Ruling 111425 dated June 26, 1991 and Memorandum 109938 dated April 28, 1989, with respect to the dutiability under 19 U.S.C. 1466 of a radar system and a satellite communications system under 19 U.S.C. 1466.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057), this notice advises interested parties that Customs is revoking a ruling and modifying a memorandum pertaining to the dutiability of certain items under 19 U.S.C. 1466.

19 U.S.C. 1466(a) provides in pertinent part:

> The *equipments*, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an *ad valorem* duty of 50 per centum on the cost thereof in such foreign country. [Emphasis supplied.]

As the above excerpt from 19 U.S.C. 1466(a) indicates, "equipment" is dutiable under 19 U.S.C. 1466(a).

By letter dated September 9, 1997, the ruling request which precipitated the revocation notice has been withdrawn. Accordingly, this document does not address that ruling request.

However, notwithstanding the withdrawal of that request, Customs wishes to make clear that Ruling 111425 and Memorandum 109936 are not in accord with the weight of administrative precedent and do not reflect Customs position. In this document, we will describe the revocation of Ruling 111425 and the modification of Memorandum 109936 and we will discuss the two comments which were received in response to the notice of proposed revocation of June 18, 1997.

In Ruling 111425, we held that the cost of the installation of a satellite communications system and a radar system was not dutiable pursuant to 19 U.S.C. 1466 because they were modifications to the hull of the vessel.

In Memorandum 109936, we ruled on numerous items. This notice applies only to the holding of Memorandum 109936 that the purchase and installation of a satellite communications system was a nondutiable modification to the vessel.

It is Customs position that the costs of satellite communications systems, radar systems, and similar communications systems are dutiable under 19 U.S.C. 1466 as vessel equipment. This position was thoroughly discussed in Ruling 113798 dated January 9, 1997, where we cited earlier rulings in support of this position. The position was also thoroughly discussed in the proposed ruling in the notice of proposed revocation published in the CUSTOMS BULLETIN on June 18, 1997.

Ruling 111425 and Memorandum 109936 are inconsistent with Customs position. Ruling 111425 is revoked by Ruling 114092 (Attachment A). Memorandum 109936 is modified by Ruling 114093 (Attachment B) to reflect that the purchase and installation of the satellite communications system are dutiable under 19 U.S.C. 1466 as vessel equipment.

Two comments were received in response to the June 18, 1997 publication in the CUSTOMS BULLETIN. A summary of the two comments and

our response thereto follows. These comments were directed toward the facts of the withdrawn ruling request. Even though the ruling request was withdrawn, we believe that it is appropriate and necessary to discuss the comments insofar as they are relevant, or potentially relevant, to Ruling 111425 and Memorandum 109936.

Comments:

The two comments were very similar. The commenters state that the installation of a system such as a sophisticated communications system involves certain permanent construction, including the placement of radar antennae on radar masts located above the ship's bridge deck and the fitting of the console on the bridge. The commenters assert that the outfitting of a vessel with a sophisticated communications system meets the four factors which Customs uses in order to determine whether certain work is a nondutiable vessel modification.

Response:

The four factors to which the commenters refer are factors which Customs has considered in determining whether certain work performed on the vessel is a modification to the hull of the vessel which is not dutiable under 19 U.S.C. 1466. These four factors are stated in many of our rulings, including Ruling 113798, dated January 9, 1997, where Customs position with respect to the dutiability of certain items as equipment was thoroughly discussed. They were also stated in the proposed ruling in the June 18, 1997 CUSTOMS BULLETIN notice of proposed revocation.

The four factors are typically cited in our rulings when the issue is whether a particular foreign shipyard item is a dutiable repair or a nondutiable modification. They may also be relevant with respect to the issue as to whether a certain foreign shipyard invoice item is dutiable vessel equipment or a nondutiable modification.

Equipment is dutiable under 19 U.S.C. 1466(a). If an item is dutiable as vessel equipment under 19 U.S.C. 1466(a), it is not a nondutiable modification to the vessel. As stated above, the four factors may be relevant with respect to whether a particular item, or system, is dutiable as equipment of the vessel or is a nondutiable modification of the vessel. However the factors are not by themselves determinative.

In Ruling 113692 dated July 2, 1997, we stated:

> These factors are not by themselves necessarily determinative, nor are they the only factors which may be relevant in a given case. However, in a given case, these factors may be illustrative, illuminating, or relevant with respect to the issue of whether certain work may be a modification of a vessel which is nondutiable under 19 U.S.C. 1466.

In our view, the critical inquiry is whether or not radar systems, satellite communications systems, and other similar types of communications systems are equipment of the vessel which is dutiable under 19 U.S.C. 1466. We have thoroughly considered this issue. We believe that

radar systems, satellite communications systems and other similar types of communications systems are vessel equipment which is dutiable under 19 U.S.C. 1466. This position was articulated at length in Ruling 113798, which cited certain earlier rulings. This position was also described in the proposed ruling in the notice of proposed revocation published in the June 18, 1997 CUSTOMS BULLETIN. The fact that radar systems, satellite communications systems, and similar types of communications systems might meet certain or all of the four factors may be relevant, but is not determinative or dispositive, with respect to whether or not the system is dutiable vessel equipment or a nondutiable modification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the dutiability of a radar system and a satellite communications system under 19 U.S.C. 1466. Customs also is modifying a memorandum which involved a decision on a vessel repair petition submitted pursuant to 19 U.S.C. 1466 with respect to the dutiability of a satellite communications system.

We note additionally that there have been other vessel repair rulings which have cited Memorandum 109936, but where the documentary evidence was determined to be insufficient to find the pertinent item to be nondutiable under 19 U.S.C. 1466. Insofar as those other rulings suggest that radar systems, satellite communications systems, or the like, are nondutiable based on the submission of certain documentary evidence, they too are revoked or modified.

Finally, we note that there may be past rulings or memoranda on point which were not disclosed by our review (e.g., such rulings, if any, may have been issued during a time frame when such rulings were not "captured" or placed in any of the electronic rulings retrieval systems). To the degree that there are any such rulings or memoranda that are inconsistent with our position described herein, those rulings are revoked.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: September 12, 1997.

JERRY LADERBERG,
Director,
International Trade Compliance Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 12, 1997.
VES–13–18–RR:IT:EC 114092 GOB
Category: Carriers

PORT DIRECTOR OF CUSTOMS
ATTN.: VESSEL REPAIR LIQUIDATION UNIT, ROOM 415
P.O. Box 2450
San Francisco, CA 94126

Re: Vessel Repair Entry No. C27–0034962–7; SYOSSET, V–184; 19 U.S.C. 1466; Ruling 111425 revoked; Radar system and satellite communications system dutiable as vessel equipment.

DEAR MADAM:

Facts:

The purpose of this ruling is to revoke Ruling 111425 dated June 26, 1991 with respect to the above-referenced vessel repair entry.

In Ruling 111425, we granted the petition for relief of Mobil Oil Corporation ("Mobil") with respect to the dutiability under 19 U.S.C. 1466 of a radar system and a satellite communications system.

Issue:

Whether the satellite communications system and the radar system are dutiable pursuant to 19 U.S.C. 1466.

Law and Analysis:

19 U.S.C. 1466 provides for the payment of duty at a rate of fifty percent *ad valorem* on the cost of foreign repairs to vessels documented under the laws of the United States to engage in foreign or coastwise trade, or vessels intended to be employed in such trade.

In its application of the vessel repair statute, the Customs Service has held that modifications, alterations, or additions to the hull and fittings of a vessel are not subject to vessel repair duties. The identification of work constituting modifications vis-a-vis work constituting repairs has evolved from judicial and administrative precedent. In considering whether an operation has resulted in a nondutiable modification, the following factors have been considered. These factors are not by themselves necessarily determinative, nor are they the only factors which may be relevant in a given case. However, in a given case, these factors may be illustrative, illuminating, or relevant with respect to the issue of whether certain work may be a modification of a vessel which is nondutiable under 19 U.S.C. 1466:

1. Whether there is a permanent incorporation into the hull or superstructure of a vessel, either in a structural sense or as demonstrated by means of attachment so as to be indicative of a permanent incorporation. See *United States v. Admiral Oriental Line*, 18 C.C.P.A 137 (1930). However we note that a permanent incorporation or attachment does not necessarily involve a modification; it may involve a dutiable repair or dutiable equipment.

2. Whether in all likelihood an item would remain aboard a vessel during an extended lay-up.

3. Whether an item constitutes a new design feature and does not merely replace a part, fitting, or structure that is performing a similar function.

4. Whether an item provides an improvement or enhancement in operation or efficiency of the vessel.

In Ruling 113798 dated January 9, 1997 we ruled on, and thoroughly discussed, the dutiability under 19 U.S.C. 1466 of a radar system. We stated:

> Item 908. *Radar Installation*. The invoice states: "removing existing radar system and install new upgraded system." The applicant states: "The purpose of the new radar installation is to upgrade the navigation equipment on the bridge. The new radar system has the ability to provide electronic charting in addition to enhanced collision avoidance technology. The older radars although still operating could not be modified or upgraded to provide the same level of technology as the new system."

We find that this item is dutiable under 19 U.S.C. 1466 as vessel equipment. This finding is based on the following authorities.

In *Otte v. United States*, 7 Ct. Cust. Appls. 166, T.D. 36489 (1916), the court stated:

> That the Congress intended to distinguish between equipment and the vessel itself is apparent from a reading of the two subsections above quoted. The line of distinction between equipment and the vessel is somewhat difficult to mark.
>
> The question was considered by the Board of Naval Construction, and their report in part reads as follows:
>
> Equipment, used in a general sense, may be defined as any portable thing that is used for, or provided in, preparing a vessel whose hull is already finished for service. It is the furniture of whatsoever nature which is put into a finished ship in equipping her. The Queen's Regulations and Admiralty Instructions give the following definition: "Equipment, in relation to a ship, includes the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing that is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service."
>
> In estimating the displacement of a ship naval constructors use the term "hull and fittings" in contradistinction to "equipment," the fittings of the hull being understood to be any permanent thing attached to the hull which would remain on board were the vessel to be laid up for a long period.
>
> Adopting these definitions, the board is of the opinion that the term "equipment" would not include donkey engines, pumps, windlasses, steam steerers, and other machinery but that it would include anchors, chain cables, boats, life-saving apparatus, nautical instruments, signal lights, and similar articles.

In Ruling 105414 dated May 24, 1982, we stated:

> It should be noted that the fact that a change or addition of equipment is made to conform with a new design scheme, or for the purpose of complying with the requirements of statute or code, is not a relevant consideration. Therefore, any change accomplished solely for these reasons, and which does not constitute a permanent addition to the hull and fittings of the vessel, would be dutiable under section 1466.
>
> Any new areas to the vessel, that is, bulkheads, permanent ballast, decks, staterooms, bars, storerooms, etc., are considered to be qualifying additions to the hull and fittings likewise. The extension of existing services into new areas would also be free of duty. This would include piping, air conditioning, ventilation, electrical service, glazing, etc., as well as final finishing for the new areas (such as painting).
>
> On the other hand, among the dutiable operations would be providing furniture for any of the areas (new and old); providing *new electronic navigation equipment;* providing new lifesaving apparatus * * * providing computer apparatus * * * [Emphasis supplied.]

In Memorandum 105807 dated December 28, 1982, we stated:

> The characterization of an article as vessel equipment, as opposed to fittings or hull/structural parts, is manifestly difficult in cases where the article has many of the attributes of both classes cited in the leading cases. For example, because a vessel pitches and rolls when at sea all *radio gear* is securely fastened, yet is classified as equipment even when such articles are usually too large to be considered (in ordinary parlance) "portable". [Emphasis supplied.]
>
> [End of excerpt from Ruling 113798.]

It is our determination that Ruling 113798 and the rulings cited therein are applicable to the radar system and the satellite communications system ruled upon in Ruling 111425.

Accordingly, the radar system and the satellite communications system ruled upon in Ruling 111425 are dutiable as vessel equipment under 19 U.S.C. 1466.

Holding:

The radar system and the satellite communications system are dutiable as vessel equipment under 19 U.S.C. 1466.

Ruling 111425 is revoked.

JERRY LADERBERG
Chief,
Entry Procedures and Carriers Branch.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 12, 1997.

VES–13–18–RR:IT:EC 114093 GOB
Category: Carriers

PORT DIRECTOR OF CUSTOMS
ATTN: VESSEL REPAIR LIQUIDATION UNIT
423 Canal Street, Room 303
New Orleans, LA 70130–2341

Re: Vessel Repair Entry No. 86–649331–4; S.S. MORMACSTAR, V–109A; 19 U.S.C. 1466; Memorandum 109936 modified; Satellite communications system dutiable as vessel equipment.

DEAR SIR:

Facts:

The purpose of this ruling is to modify Memorandum 109936 dated April 28, 1989 with respect to the above-referenced vessel repair entry.

In Memorandum 109936 we ruled on numerous items with respect to dutiability under 19 U.S.C. 1466. With respect to a satellite communications system, we granted relief to Mormac Marine Transport, Inc., ("Mormac") with respect to the dutiability under 19 U.S.C. 1466 of a satellite communications system, i.e., we determined that the expenses of the satellite communications system were nondutiable.

Issue:

Whether the cost of the satellite communications system is dutiable pursuant to 19 U.S.C. 1466.

Law and Analysis:

19 U.S.C. 1466 provides for the payment of duty at a rate of fifty percent *ad valorem* on the cost of foreign repairs to vessels documented under the laws of the United States to engage in foreign or coastwise trade, or vessels intended to be employed in such trade.

In its application of the vessel repair statute, the Customs Service has held that modifications, alterations, or additions to the hull and fittings of a vessel are not subject to vessel repair duties. The identification of work constituting modifications vis-a-vis work constituting repairs has evolved from judicial and administrative precedent. In considering whether an operation has resulted in a nondutiable modification, the following factors have been considered. These factors are not by themselves necessarily determinative, nor are they the only factors which may be relevant in a given case. However, in a given case, these factors may be illustrative, illuminating, or relevant with respect to the issue of whether certain work may be a modification of a vessel which is nondutiable under 19 U.S.C. 1466:

1. Whether there is a permanent incorporation into the hull or superstructure of a vessel, either in a structural sense or as demonstrated by means of attachment so as to be indicative of a permanent incorporation. See *United States v. Admiral Oriental Line*, 18 C.C.P.A. 137 (1930). However, we note that a permanent incorporation or attachment does not necessarily involve a modification; it may involve a dutiable repair or dutiable equipment.

2. Whether in all likelihood an item would remain aboard a vessel during an extended lay-up.

3. Whether an item constitutes a new design feature and does not merely replace a part, fitting, or structure that is performing a similar function.

4. Whether an item provides an improvement or enhancement in operation or efficiency of the vessel.

In Ruling 113795 dated January 9, 1997, we ruled on, and thoroughly discussed, the dutiability under 19 U.S.C. 1466 of a radar system. We stated:

> Item 908. *Radar Installation.* The invoice states: "remove existing radar system and install new upgraded system." The applicant states: "The purpose of the new radar installation is to upgrade the navigation equipment on the bridge. The new radar system has the ability to provide electronic charting in addition to enhanced

collision avoidance technology. The older radars although still operating could not be modified or upgraded to provide the same level of technology as the new system."

We find that this item is dutiable under 19 U.S.C. 1466 as vessel equipment. This finding is based on the following authorities.

In *Otte. v. United States*, 7 Ct. Cust. Appls. 166, T.D. 36489 (1916), the court stated:

> That the Congress intended to distinguish between equipment and the vessel itself is apparent from a reading of the two subsections above quoted. The line of distinction between equipment and the vessel is somewhat difficult to mark.
>
> The question was considered by the Board of Naval Construction, and their report in part reads as follows:
>
> Equipment, used in a general sense, may be defined as any portable thing that is used for, or provided in, preparing a vessel whose hull is already finished for service. It is the furniture of whatsoever nature which is put into a finished ship in equipping her. The Queen's Regulations and Admiralty Instructions give the following definition: "Equipment, in relation to a ship, includes the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing that is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service."
>
> In estimating the displacement of a ship naval constructors use the term "hull and fittings" in contradistinction to "equipment," the fittings of the hull being understood to be any permanent thing attached to the hull which would remain on board were the vessel to be laid up for a long period.
>
> Adopting these definitions, the board is of the opinion that the term "equipment" would not include donkey engines, pumps, windlasses, steam steerers, and other machinery but that it would include anchors, chain cables, boats, life-saving apparatus, nautical instruments, signal lights, and similar articles.

In Ruling 105414 dated May 24, 1982, we stated:

> It should be noted that the fact that a change or addition of equipment is made to conform with a new design scheme, or for the purpose of complying with the requirements of statute or code, is not a relevant consideration. Therefore, any change accomplished solely for these reasons, and which does not constitute a permanent addition to the hull and fittings of the vessel, would be dutiable under section 1466.
>
> Any new areas to the vessel, that is, bulkheads, permanent ballast, decks, staterooms, bars, storerooms, etc., are considered to be qualifying additions to the hull and fittings. Likewise, the extension of existing services into new areas would also be free of duty. This would include piping, air conditioning, ventilation, electrical service, glazing, etc., as well as final finishing for the new areas (such as painting).
>
> On the other hand, among the dutiable operations would be providing furniture for any of the areas (new and old); providing *new electronic navigation equipment;* providing new lifesaving apparatus * * * providing computer apparatus * * * [Emphasis supplied.]

In Memorandum 105807 dated December 28, 1982, we stated:

> The characterization of an article as vessel equipment, as opposed to fittings or hull/structural parts, is manifestly difficult in cases where the article has many of the attributes of both classes cited in the leading cases. For example, because a vessel pitches and rolls when at sea all *radio gear* is securely fastened, yet is classified as equipment even when such articles are usually too large to be considered (in ordinary parlance) "portable". [Emphasis supplied.]
>
> [End of extent from Ruling 113798.]

It is our determination that Ruling 113798 and the rulings cited therein are applicable to the satellite communications system ruled upon in Memorandum 109936.

Accordingly, the satellite communications system ruled upon in Memorandum 109936 is dutiable as vessel equipment under 19 U.S.C. 1466.

Holding:

The satellite communications system is dutiable as vessel equipment under 19 U.S.C. 1466.

Memorandum 109936 is modified accordingly.

JERRY LADERBERG,
Chief,
Entry Procedures and Carriers Branch.

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF COTTON CAPS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of cotton caps. Notice of the proposal was published on August 13, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 33.

EFFECTIVE DATE: This decision is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 1, 1997.

FOR FURTHER INFORMATION: Greg Deutsch, Office of Regulations and Rulings, Textile Branch, (202) 482–6976.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 13, 1997, notice was published in the CUSTOMS BULLETIN, Volume 31, Number 33, of a proposal to revoke DD 814497, dated September 27, 1995. No comments were received in response to this notice.

In Boston District Ruling Letter (DD) 814497, dated September 27, 1995, Customs classified three styles of caps in subheading 6505.90.2590, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), textile category 859, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed * * *: Other: Of cotton, flax or both: Not knitted: Other, Other."

It is Customs position that, since the articles are composed of 100 percent cotton, they are more specifically provided for in subheading 6505.90.2060, HTSUSA, textile category 359, the provision for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other."

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs is revoking DD 814437 pertaining to the classification of cotton caps. HQ 958958 which revokes DD 814437 is set forth as Attachment to this document.

Publications of rulings or decision pursuant to section 625 does not constitute a change of practice or position as contemplated in section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: September 12, 1997.

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 12, 1997.

CLA–2 RR:TC:TE 958958 GGD
Category: Classification
Tariff No. 6505.90.2060

MS. MARY C. HUNTER
IMPORT PRODUCTION STATUS ADMINISTRATOR
WOOLRICH, INCORPORATED
Woolrich, PA 17779

Re: Revocation of Boston District Ruling Letter (DD) 814497; cotton twill woven caps: headwear of cotton.

DEAR MS. HUNTER:

In DD 814497, issued September 27, 1995, three separate styles of cotton caps were classified in subheading 6505.90.2590, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), textile category 859, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed * * *: Other: Of cotton, flax or both: Not knitted: Other, Other." We have reviewed that ruling and have found it to be partially in error. Therefore, this ruling revokes DD 814497.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as mended by section 623 of Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057 (1993)), notice of the proposal was published on August 13, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 33.

Facts:

At the time DD 814497 was issued, three samples, identified by style numbers 280, 281, and 282, were each described as a 100 percent cotton twill woven cap featuring a six panel crown with four grommets and a single button at the center. Each cap had a visor and a plastic adjustable tab in the rear. Style nos. 280 and 282 featured embroidery in the front which stated "Lake Wilderness" and "Flashing Rod," respectively. Style no. 281 featured a patch in front which bore a Woolrich logo.

Issue:

In what subheading are the cotton caps properly classified?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the

headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 6505, HTSUS, applies to "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed * * *." The EN to heading 6505 indicate that the heading covers hats, whether or not trimmed (with the trimmings of any material), peaked caps of various kinds (uniform caps, etc.), and headgear made up from woven fabric, lace, net fabric, etc. * * * having clearly the character of headgear.

Subheading 6505.90.2060, HTSUSA, textile category 359, provides for "Hats and other headgear * * *: Other: Of cotton, flax or both; Not knitted: Certified hand-loomed and folklore products: **and headwear of cotton,** Other." [emphasis added] Subheading 6505.90.2590, HTSUSA, textile category 859, provides for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: **Other** [than "Certified hand-loomed and folklore products; and headwear of cotton"], Other." [emphasis added] Since the former subheading provides specifically for "headwear of cotton," we find that the three styles of caps, which are composed of 100 percent cotton, are more properly classified in subheading 6505.90.2060, HTSUSA.

Holding:

The three styles of 100 percent cotton twill caps, identified by style numbers 280, 281, and 282, are classified in subheading 6505.90.2060, HTSUSA, textile category 359, the provision for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: certified hand-loomed and folklore products; and headwear of cotton, Other." The general column one duty rate is 7.8 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

DD 814497, issued September 27, 1995, is hereby revoked.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.

REVOCATION OF TARIFF CLASSIFICATION DECISION RELATING TO SHUNT REACTORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of protest review decision.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking the principles in a protest review decision (PRD) under the Harmonized Tariff Schedule of the United States (HTSUS) relating to shunt reactors. Shunt reactors are used with transformers on long distance transmission lines that carry high voltage electrical power. Notice of the proposed revocation was published on August 6, 1997, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after December 1, 1997.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 6, 1997, notice was published in the CUSTOMS BULLETIN, Volume 31, Number 32, of a proposal to revoke *HQ* 957025, dated December 30, 1994. This decision granted Protest 0711–94–100698, filed with Customs in Champlain, New York, on June 23, 1994, concerning the classification of certain shunt reactors. No comments were received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking *HQ* 957025 to reflect the proper classification of shunt reactors under subheading 8504.50.00, HTSUS, a provision for inductors. *HQ* 960691 revoking *HQ* 957025 is set forth as the Attachment to this document.

HQ 957025 reflects a final determination with respect to a particular protest. As such, Customs recognizes that it cannot be modified or revoked with respect to the disposition of the entries in the protest. However, Customs is revoking the legal principles set forth in *HQ* 957025 to reflect the proper classification of the merchandise.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 10, 1997.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 10, 1997.

CLA–2 RR:TC:MM 960691 JAS
Category: Classification
Tariff No. 8504.50.00

MS. MARY HASHIM
ASEA BROWN BOVERI, (A.B.B. INC.)
1600 Montee Ste Julie
Varennes, PQ J3X 1S4

Re: *HQ* 957025 Revoked; power shunt reactor, electrical apparatus used with transformers on long distance transmission lines; liquid dielectric transformer, Subheading 8504.23.00, inductor; apparatus for offsetting the capacitive effect of electrical current in power transmission lines; composite machine, principal function, Section XVI, Note 3.

DEAR MS. HASHIM:

On June 23, 1994, Asea Brown Boveri, (A.B.B. Inc.) filed administrative protest 0712–94–100698 with Customs officials in Champlain, New York, contesting the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain power shunt reactors.

HQ 957025, issued to the Assistant District Director of Customs, Champlain, New York, on December 30, 1994, granted this protest under subheading 8504.23.00, HTSUS, a provision for liquid dielectric transformers having a power handling capacity exceeding 10,000 kVA, but denied the protest with respect to a claim for duty-free status under subheading 9905.85.15, HTSUS, which prescribes a free rate for originating goods under the North American Free Trade Agreement (NAFTA). We have reconsidered *HQ* 957025, and now believe that it is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2166 (1993), notice of the proposed revocation of *HQ* 957025 was published on August 6, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 32.

Facts:

The merchandise in protest 0712–94–100698, a power shunt reactor or shunt reactor, essentially consists of a reactor, also called an inductor, within which are four bushing current transformers which step down or reduce the current. Other auxiliary devices include a hot oil thermometer, gauges, valves and relays. The shunt reactor was described in *HQ* 957025 as being used *in conjunction with* transformers on long distance transmission lines that carry high voltage electrical power. They are installed "in shunt" or parallel to high

voltage electrical transmission lines. The function of shunt reactors is to create an effect which absorbs or offsets the capacitive effect along the power transmission line. This eliminates unacceptable deviations from the required voltage of the network. This is the only way that large blocks of power at high KV can be transmitted, relatively unimpeded, over long distances.

The provisions under consideration are as follows:

8504	Electrical transformers, static converters (for example, rectifiers) and inductors; power supplies for automatic data processing machines or units thereof of heading 8471; parts thereof:
	Liquid dielectric transformers:
8504.23.00	Having a power handling capacity exceeding 10,000 kVA * * * 2.1 percent *ad valorem*/Free under subheading 9905.85.15 as an originating good under NAFTA
* * * * * * * * *	
8504.50.00	Other inductors * * * 3 percent *ad valorem*/0.3 percent as an originating good under NAFTA

Issue:

Whether power shunt reactors are inductors of heading 8504.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Section XVI, Note 3, HTSUS, which governs the classification of goods in heading 8504, among others, states that unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

The decision in *HQ* 957025 classifying power shunt reactors in subheading 8504.23.00, HTSUS, as liquid dielectric transformers, was based in part on Customs belief that power shunt reactors are considered by the electric power industry to be transformers. This is not the case. The power shunt reactors in issue, each consisting of an inductor and multiple bushing current transformers, qualify under Section XVI, Note 3, HTSUS, as composite machines that are to be classified as if consisting of that component or as being that machine which performs the principal function. The available evidence indicates that the electric power industry recognizes shunt reactors with bushing current transformers to be inductors, and that by function and design, the transformers are auxiliary or accessory devices to the reactors' primary function of inductance. This warrants the conclusion that power shunt reactors are classifiable as inductors.

Holding:

Under the authority of GRI 1, power shunt reactors are provided for in heading 8504. They are classifiable in subheading 8504.50.00, HTSUS.

HQ 957025 reflects a final determination with respect to a particular protest. As such, Customs recognizes that it cannot be modified or revoked with respect to the disposition of the entries in that protest. However, for the reasons stated above, the legal principles set forth in *HQ* 957025 are hereby revoked and no longer represent the position of the Customs Service with respect to the classification of power shunt reactors.

In accordance with 19 U.S.C 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

REVOCATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF NON-ELECTRIC COFFEE MAKERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling and modify another ruling, both relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of non-electric coffee makers. These articles are essentially heat-resistant glass carafes containing a wire mesh filter mounted on a plunger. Notice of the proposal was published on August 6, 1997, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after December 1, 1997.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 6, 1997, notice was published in the CUSTOMS BULLETIN, Volume 31, Number 32, of a proposal to revoke *HQ* 087313, dated September 4, 1990, and to modify *NY* 894612, dated February 25, 1994. No comments were received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking *HQ* 087313 and modifying *NY* 894612, to reflect the proper classification of the non-electric coffee makers in subheading 8210.00.00, HTSUS, as hand-operated mechanical appliances used in the preparation, conditioning or serving of food or drink. *HQ* 960669, revoking *HQ* 087313, and *HQ* 960670, modifying *NY* 894612, are set forth as "Attachment A" and "Attachment B" respectively.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 10, 1997.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 10, 1997.

CLA–2 RR:TC:MM 960669 JAS
Category: Classification
Tariff No. 8210.00.00

MR. E. WILLERTH
MIDWEST CUSTOM SERVICES, INC.
P.O. Box 905
631 North Central Avenue
Wood Dale, IL 60191–0905

Re: *HQ* 087313 Revoked; non-electric coffee maker; glass carafe, steel filter mesh and plunger, plastic top and handle, nuts and screws; household appliance for brewing coffee; glassware of a kind used for table, kitchen or similar purposes; hand-operated mechanical appliance, Chapter 82, Note 1(a); specificity, GRI 3(a).

DEAR MR. WILLERTH:

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 087313 was published on August 6, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 32.

Facts:

The non-electric coffee makers in *HQ* 087313 were the Bistro 3 Cup, Style #1503, the Bistro 8 Cup, Style #1508, the Bistro 12 Cup, Style #1512, and the Loggia 8 Cup, Style #1568. Each model consists of a heat-resistant glass carafe, a steel wire mesh filter attached to a rod-like plunger, plastic handle and cover, a steel reinforcing band extending around the circumference of the carafe, and nuts and screws. In operation, boiling water and coffee are added to the carafe. When the coffee has brewed, the plunger is slowly pressed downward, pushing the grounds to the bottom of the carafe.

The provisions under consideration are as follows:

7013		Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
7013.39		Other:
7013.39.10		Pressed and toughened (specially tempered) * * * 12.5 percent *ad valorem*
		Other:
7013.39.20		Valued not over $3 each * * * 27.8 percent *ad valorem*
*	*	* * * * * * *
8210.00.00		Hand-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof * * * 4.3 percent *ad valorem*.

Issue:

Whether the Bistro and Loggia style non-electric coffee makers are goods of heading 8210.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the, contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the

EN's should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

For the reasons stated in *HQ* 087313, the non-electric coffee makers in issue are provided for in heading 7013. However, in rendering this decision, the provision in heading 8210 was not considered. In this regard, Chapter 82, Note 1(a), HTSUS, states, in relevant part, that the chapter covers articles with a working surface or other working part of base metal. The wire mesh filter and plunger, in our opinion, fall within this description. Moreover, relevant **ENs** at p. 1206 state that for the purposes of heading 8210 a simple lever or plunger action is not in itself regarded as a mechanical feature unless the appliance is fitted with base plates, etc., for standing on a table, on the floor, etc. The articles in issue here are fitted around their circumference with a metal band that extends vertically to the floor to form feet. In our opinion, the non-electric coffee makers are described by heading 8210.

GRI 3(a), HTSUS, states that where goods are, *prima facie*, classifiable in two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. In this case, the non-electric coffee makers are *prima facie* classifiable both in heading 7013 and in heading 8210. Heading 7013 provides a less complete description for the good because it does not take account of the base metal mesh filter and plunger. Heading 8210, on the other hand, describes the entire article and more clearly identifies it as an appliance with mechanical capability that operates by hand. In our opinion, heading 8210 provides the most specific description for the non-electric coffee makers in issue.

Holding:

Under the authority of GRI 3(a), HTSUS, non-electric coffee makers identified as the Bistro 3 Cup, Style #1503, the Bistro 8 Cup, Style #1508, the Bistro 12 Cup, Style #1512, and the Loggia 8 Cup, Style #1568 are provided for in heading 8210. They are classifiable in subheading 8210.00.00, HTSUS.

HQ 087313, dated September 4, 1990, is revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 10, 1997.

CLA–2 RR:TC:MM 960670 JAS
Category: Classification
Tariff No. 8210.00.00

MR. GAET C. TYRANSKI
CPC CORPORATION
1 Tampa City Center, Suite 2650
201 North Franklin Street
Tampa, FL 33602

Re: *NY* 894612 Modified; non-electric coffee maker; electric kettle, cafetiere, glass carafe with steel filter mesh and plunger, plastic top and handle, nuts and screws; household appliance for brewing coffee; glassware of a kind used for table, kitchen or similar purposes, Heading 7013; hand-operated mechanical appliance, Chapter 82, Note 1(a).

DEAR MR. TYRANSKI:

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agree-

ment Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of *NY* 894612 was published on August 6, 1997, in the CUSTOMS BULLETIN, Volume 31, Number 32.

Facts:

NY 894612 addressed the tariff status of a kettle and the cafetiere, also known as a French press coffee maker. The kettle, of polypropylene, is available in both cordless and corded designs. The cafetiere is the model T806 and consists of a heat resistant glass pyrex carafe, a handle and lid of polypropylene, base metal nuts and screws, and a steel mesh filter attached to a plunger. A base metal band around the circumference of the carafe extends vertically to the floor to form feet. In operation, the kettle is used to boil the water which is then added to the carafe together with the coffee. When the coffee has brewed, the plunger is slowly pressed downward, pushing the grounds to the bottom of the carafe. *NY* 894612 classified the kettle in subheading 8516.79.00, HTSUS, as an electrothermic appliance of a kind used for domestic purposes, and the cafetiere in subheading 7013.39.60, HTSUS, as glassware of a kind used for table and kitchen purposes.

The provisions under consideration are as follows:

7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
7013.39	Other:
7013.39.60	Other, valued over $5 each * * * 7.2 percent *ad valorem*
*	* * * * * * *
8210.00.00	Hand-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof * * * 4.3 percent *ad valorem*

Issue:

Whether the catetiere is a good of heading 8210.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the **ENs** should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

For the reasons stated in *HQ* 087313, the non-electric coffee maker model T806 is provided for in heading 7013. However, in rendering this decision, the provision in heading 8210 was not considered. In this regard, Chapter 82, Note 1(a), HTSUS states, in relevant part, that the chapter covers articles with a working surface or other working part of base metal. In our opinion, the wire mesh filter and plunger fall within this description. Moreover, relevant **ENs** at p. 1206 state that for the purposes of heading 8210 a simple lever or plunger action is not in itself regarded as a mechanical feature unless the appliance is fitted with base plates, etc., for standing on a table, on the floor, etc. The base metal band that extends vertically to the floor to form feet is within this description. For these reasons, the non-electric coffee maker model T806 is also described by heading 8210.

GRI 3(a), HTSUS, states that where goods are, *prima facie*, classifiable in two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. In this case, the non-electric coffee makers are *prima facie* classifiable both in heading 7013 and in heading 8210. By its terms, heading 7013 provides a less complete description for the good because it does not take into account the base metal mesh filter and plunger. Heading 8210, on the other hand, describes the entire article and more clearly identifies it as an appliance with mechanical capability that operates by hand. In our opinion, heading 8210 provides the most specific description for the non-electric coffee maker model T806.

Holding:

Under the authority of GRI 3(a), HTSUS, the non-electric coffee maker or cafetiere, model T806, is provided for in heading 8210. It is classifiable in subheading 8210.00.00, HTSUS. *NY* 894612, dated February 25, 1994, is modified with respect to this merchandise.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

MODIFICATION OF A RULING LETTER REGARDING THE TARIFF CLASSIFICATION OF A TOOL ROLL-UP ORGANIZER

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying New York Ruling Letter (NY) 887383, dated June 22, 1993, concerning the tariff classification of a tool roll-up organizer. Notice of the proposed modification was published on July 30, 1997, in the CUSTOMS BULLETIN, Volume 31, No. 31.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Rebecca A Hollaway, Tariff Classification Appeals Division (202) 482–6996.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 30, 1997, Customs published in the CUSTOMS BULLETIN, Volume 31, No. 31, a notice of a proposal to modify NY 887383, which classified a tool roll-up organizer under subheading 6307.90.9986 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). It is now Customs position that the tool roll-up organizer is classifiable under subheading 4202.92.9025, HTSUSA.

No comments were received in response to the notice.

Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested par-

ties that Customs modifies NY 887383, dated June 22, 1993. Headquarters Ruling Letter 959546 modifying NY 887383 is set forth in the attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), of the Customs Regulations (19 CFR 177.10(c)(1)).

Dated: September 12, 1997.

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 12, 1997.

CLA-2 RR:TC:TE 960245
Category: Classification
Tariff No. 4202.92.9025

MR. SAMUEL ZESKER
SOBEL SHIPPING CO., INC.
170 Broadway, Suite 1501
New YorK, NY 10038

Re: Modification of NY 887383; tool roll-up organizer; heading 4202; heading 6307; *Totes v. United States*, 69 F.3d 495; tool boxes; tool cases; tool rolls.

DEAR MR. ZEKSER:

On June 22, 1993, Customs issued New York Ruling Letter (NY) 887383 your company, on behalf of B & K Industries Inc., regarding the tariff classification of a "Tool Roll-Up Organizer." We enclose a copy of that ruling for your convenience.

We have reviewed NY 887383 and determined that the classification of the tool roll-up organizer was incorrect. Our reasons are set forth below.

Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057), notice of the proposed modification of NY 887383 was published on July 30, 1997, in the CUSTOMS BULLETIN, Volume 31, No. 31.

Facts:

In NY 887383, Customs classified a tool roll-up organizer under subheading 6307.90.9986 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as an "other made-up article."

The tool roll-up organizer was described in NY 887383 as follows:

> The sample submitted is a tool roll-up organizer made of 600 denier polyester woven fabric that is coated on one side with PVC. In unfolded condition, it measures approximately 25 3/16 inches long by 21 inches wide. It features thirty opened pockets. Inserted at the top of the article are two metal rings. Attached to the lower right side are two web straps with strips similar to the VELCRO brand loop fastener and a D-ring.

Issue:

Whether the tool roll-up organizer is classifiable under heading 4202, HTSUSA, as tool bags or similar containers, or under heading 6307, HTSUSA, as other made-up textile articles?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes. Where goods cannot be classified on the basis of GRI 1, the remaining GRI will be applied in order.

Heading 4202, HTSUSA, provides for:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, **tool bags,** sports bags, bottle cases, jewelry boxes, powder cases and **similar containers,** of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper. (Emphasis added).

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It has, therefore, been the practice of the Customs Service to follow, whenever possible, the terms of the EN when interpreting the HTSUSA.

On July 1, 1992, the Harmonized System Committee issued a revision to the EN for heading 4202. This revision provides at page 661 that heading 4202 does not cover:

> (f) Tool boxes or cases [in the first part of the heading], not specially shaped or internally fitted to contain particular tools with or without their accessories (generally, **heading 39.26** or **73.26)**. (Emphasis in original).

The EN also state that the expression "similar containers" in the second part of the heading (after the semicolony) includes, among other things, "tool and jewellery rolls." Unlike tool boxes and tool cases, there is no requirement in the EN that tool rolls be specially shaped or internally fitted to contain particular tools.

In the instant case, the tool roll up organizer is *"ejusdem generis"* or "of the same kind" of merchandise as tool bags listed in heading 4202, and/or tool rolls referred to in the EN.

In the case of *Totes v. United States*, 69 F.3d 495 (1995), the court addressed the principle of *ejusdem generis* in determining whether a trunk organizer was a "similar container" under heading 4202. The court stated:

> Under the rule of *ejusdem generis*, which means "of the same kind," where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.

The tool roll-up organizer is a container similar to tool bags and/or tool rolls in that it possesses the essential characteristics or purposes of those articles, i.e., to organize, store and protect tools. It is, therefore, classifiable under heading 4202, HTSUSA.

Holding:

The tool roll-up organizer is classifiable under subheading 4202.92.9025, HTSUSA, which provides for, among other things, tool bags and similar containers with an outer surface of man made fibers. It is dutiable at the general column rate of 19.3 percent *ad valorem* and falls within textile category 670.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check close to the time, of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the US. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth ad tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importing the merchandise to determine the current applicability of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulation (19 CFR 177.10(c)(1)).

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF LIQUID CRYSTAL DISPLAY INDICATOR MODULES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of liquid crystal display (LCD) indicator modules. Customs invites comments on the correctness of the proposed revocation.

DATE: Comments must be received on or before October 31, 1997.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW, (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Attorney-Advisor, Tariff Classification Appeals Division, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of LCD indicator modules. Customs invites comments on the correctness or the proposed revocation.

In NY B84243, issued on May 9, 1997, Customs ruled that LCD indicator modules were classifiable as other boards for electric control or the distribution of electricity under subheading 8537.10.90, Harmonized Tariff Schedule of the United States (HTSUS). NY B84243 is set forth in "Attachment A" to this document

Based upon a further examination of the merchandise and language set forth in General Explanatory Note (VI) to section XVI, Explanatory Note 90.13, and relative section and chapter notes of the HTSUS, Customs now finds that the LCD indicator modules are classifiable as other parts suitable for use solely or principally with the apparatus of headings 8525 to 8528, HTSUS, under subheading 8529.90.99. HTSUS.

Customs intends to revoke NY B84243 to reflect the proper classification of the LCD indicator modules under subheading 8529.90.99, HTSUS. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters ruling 960873 revoking NY B84243, is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 11, 1997.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 9, 1997.

CLA-2-85:RR:NC:1: 112 B84243
Category: Classification
Tariff No. 8537.10.9070

MR. A.J. SPATARELLA
KANEMATSU USA, INC.
114 West 47 Street
New York, NY 10036

Re: The tariff classification of liquid crystal display indicator modules with printed circuit board, from Korea.

DEAR MR. SPATARELLA:

In your letter dated April 8, 1997 you requested a tariff classification ruling.

As indicated by the submitted literature, the liquid crystal display modules consist of an indicator panel connected to a printed circuit board. In one case, the indicator panel is capable of displaying one line of ten segment characters, while the other indicator panel is capable of displaying two lines with a total of 20 segment characters. The printed circuit board,

consisting of top and bottom halves with numerous depression switches mounted thereon, forms the base of the telephone dialpad. It provides electrical signals to the indicator panel so that the relevant information can be displayed. As you indicate, these display modules are installed in mobile cellular telephones.

In your request, you state that you believe that these modules are properly classified under HTS subheading 8531.20.00, the provision for, indicator panels incorporating liquid crystal devices. Since these modules consist of a circuit board which controls electrical distribution, and a liquid crystal display, they are considered composite machines. As such, classification is governed by the component which performs the principal function. In this instance, we believe that the functions at both the circuit board and the liquid crystal display are co-equal. Therefore, in accordance with General Rule of Interpretation 3(c), tariff classification is determined by the heading which appears last in numerical order in the tariff schedule.

The applicable subheading for the liquid crystal display indicator modules with printed circuit board will be 8537.10.9070, Harmonized Tariff Schedule of the United States (HTS), which provides for other boards, panels, * * * and other bases, * * *, for the control or distribution of electricity: For a voltage not exceeding 1,000 V. The rate of duty will be 3.7 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212–466–5680.

ROBERT SWIERUPSKI,
Chief, Metals and Machinery Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

RR:TC:MM 960673 DWS
Category: Classification
Tariff No. 8529.90.99

MR. A.J. SPATARELLA
KANEMATSU USA INC.
114 West 47th Street
New York, NY 10036

Re: Reconsideration of NY B84243; LCD Indicator Modules; Section XVI, Notes 2 and 3; General Explanatory Note (VI) to Section XVI; HQ 955447; *Kores Manufacturing Inc. v. U.S.;* 9013; 8537.10.90; 8531.20.00.

DEAR MR. SPATARELLA:

This is in response to your letters of June 27, 1997, to the Director, National Commodity Specialist Division of Customs, New York, and August 29, 1997, to this office concerning NY B84243, issued to you on May 9, 1997, relating to the classification of liquid crystal display (LCD) indicator modules under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The merchandise consists of LCD indicator modules which are designed for and dedicated to mobile cellular phones. Each module consists of an LCD glass sandwich connected by a ribbon connector to a printed circuit board (PCB) an which numerous depression switches are mounted. The glass sandwich consists of a liquid crystal layer sandwiched between two plates of glass. The row and column drivers for the LCD are contained within the PCB, as are the keypad controls for the operation of a cellular telephone.

Issue:

Whether the LCD indicator modules are classifiable under subheading 8529.90.99, HTSUS, as other parts suitable for use solely or principally with the apparatus of headings 8525 to 8528, HTSUS; under subheading 8531.20.00, HTSUS, as indicator panels incorporating LCDs; or under subheading 8537.10.90, HTSUS, as other boards for electric control or the distribution of electricity.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

8529.90.99: [p]arts suitable for use solely or principally with the apparatus of headings 8525 to 8528: [o]ther: [o]ther: [o]ther.

Goods classifiable under this provision receive duty-free treatment.

8531.20.00: [e]lectric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof: [i]ndicator panels incorporating liquid crystal devices (LCD's) or light emitting diodes (LED's).

The general, column one rate of duty for goods classifiable under this provision is 1.4 percent *ad valorem*.

8537.10.90: [b]oards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: [f]or a voltage not exceeding 1,000 V: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 3.7 percent *ad valorem*.

Section XVI, note 3, HTSUS, states that:

> [u]nless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

In NY B84243, Customs held that the indicator modules, each consisting of a LCD glass sandwich and a PCB fitted together by the ribbon connector, constituted a composite machine as defined in section XVI, note 3, HTSUS, with the functions of the indicator modules described by subheadings 8531.20.00, HTSUS, and 8537.10.90, HTSUS. Because a principal function could not be ascertained, Customs classified the indicator modules under subheading 8537.10.90, HTSUS, the provision describing a function of the indicator modules which appears last in order in the HTSUS. *See* General Explanatory Note (VI) to section XVI (p. 1227). You continue to claim that the indicator modules are properly classifiable under subheading 8531.20.00, HTSUS.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory Note 90.13 (p. 1600) states that:

> [t]his heading includes:
>
> (1)**Liquid crystal devices** consisting of a liquid crystal layer sandwiched between two sheets or plates of glass or plastics, whether or not fitted with electrical connections, presented in the piece or cut to special shapes and not constituting articles described more specifically in other headings of the Nomenclature.

Because LCD glass sandwiches are properly classifiable under heading 9013, HTSUS, we disagree with the holding in NY B84243 that the indicator modules constitute composite machines as defined in section XVI, note 3, HTSUS. For a good to qualify for consideration as a section XVI, note 3, HTSUS, composite machine, the separate functions it performs must be described under different headings in section XVI, HTSUS. *See* General Explanatory Note (VI) to section XVI (p. 1227). As the LCD sandwiches are classifiable in chapter

90, HTSUS, section XVI, note 3, HTSUS, is inapplicable. We note that there is not a similar "composite machine" note to chapter 90, HTSUS, as there is with functional units.

You cite HQ 955447, dated February 9, 1994, as precedence for classifying the indicator modules under subheading 8531.20.00, HTSUS. In that ruling we held LCD indicator panel modules with row and column drivers to be classifiable under subheading 8531.20.00, HTSUS. However, the subject indicator modules are distinguishable from those in HQ 955447, because the PCB part of the subject modules incorporates the LCD drivers and keypad controls for the operation of a cellular telephone. The PCB in each of the indicator modules in HQ 955447 incorporated the LCD drivers only. Therefore, it is our position that the subject indicator modules are beyond the scope of articles classifiable under heading 8531, HTSUS.

Whether an article is a part or another article depends on the nature of the so-called "part" and its usefulness, function and purpose in relation to the article in which it is designed to serve. *Kores Manufacturing Inc. v. U.S.*, 3 CIT 178, 179 (1982), aff'd appeal No. 82–83 (C.A.F.C. 1983). It is our position that the indicator modules are parts of cellular telephones, in that their function is essential to the operation of cellular telephones.

Section XVI, note 2, HTSUS, states:

> [s]ubject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:
>
> (a) Parts which are goods included in any or the headings of chapters 84 and 85 (other than headings 8485 and 8548) are in all cases to be classified in their respective headings;
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines or the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
>
> (c) All other parts are to be classified in heading 8485 or 8548.

Because the indicator modules are not goods described under any or the headings of chapters 84 and 85, HTSUS, section XVI, note 2(a), HTSUS, is inapplicable. However, based upon section XVI, note 2(b), HTSUS, because the indicator modules are parts dedicated for use with mobile cellular telephones classifiable under heading 8525, HTSUS, they are classifiable under subheading 8529.90.99, HTSUS.

Holding:

The LCD indicator modules are classifiable under subheading 8529.90.99, as other parts suitable for use solely or principally with the apparatus of headings 8525 to 8528, HTSUS.

Effect on other Rulings:

NY B84243 is revoked in full.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

PROPOSED MODIFICATION OF RULING LETTER CONCERNING THE CLASSIFICATION OF SHEETING MADE OF WOVEN POLYPROPYLENE STRIPS COATED WITH A POLYPROPYLENE FILM

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of sheeting made of woven polypropylene strips coated with a polypropylene film.

DATE: Comments must be received on or before October 31, 1997.

ADDRESS: Written comments preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Ruling, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Hollaway, Tariff Classification Appeals Division (202) 482–6996.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of sheeting made of woven polypropylene strips coated with polypropylene film.

In New York Ruling Letter (NY) 806262, dated March 17, 1995, Customs incorrectly classified sheeting of woven polypropylene strips with a polypropylene coating as plaiting materials under subheading 4601.99.0000 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). NY 806262 is set forth as "Attachment A" to this document. The woven polypropylene strips with a polypropylene coating are correctly classified as articles made up from goods of heading 4601 under subheading 4602.90.0000, HTSUSA. Before taking this action, we will give consideration to any written comments timely re-

ceived. Proposed HQ 960304 modifying NY 806262 is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.0), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 12, 1997.

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 17, 1995.

CLA–2–46:S:N:N8:230 806263
Category: Classification
Tariff No. 4601.99.0000 And 4602.90.0000

MR. WILLIAM J. MALONEY
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

Re: The tariff classification of plaiting material (woven polypropylene plastic strips), and bags made of such material, from India, Thailand or other countries.

DEAR MR. MALONEY:

In your letter dated January 24, 1995, on behalf of your client, Ovasco Industries (a division of Ohio Valley Bag and Burlap Company), you requested a tariff classification ruling.

A sample of the first item in question, accompanied by an independent test report, was submitted and will be retained for reference. It is a representative piece of style 5540 plaiting material, which will be imported in rolls or sheets of varying sizes. The product will be woven from white, clear or colored polypropylene strips, and will be laminated on one side with a 20 micron polypropylene film.

The submitted test report indicates that 92.5% of the warp strips, 78% of the filling strips and approximately 87% of both the warp and filling strips exceed 5 mm in width. The New York Customs Laboratory has analyzed the sample, and its findings agree with the foregoing.

The applicable subheading for the style 5540 plaiting material will be 4601.99.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) plaiting materials * * * bound together in parallel strands or woven, in sheet form, whether or not finished articles. The rate of duty will be 3.3%.

The other goods in question are open-top bags or sacks made from the same type of plaiting material described above. The rectangular bags would be 16″ wide by 31″ long by 18″ high, and would be sewn along the bottom edges and one vertical corner. Another style would be manufactured in the form of a tube which is cut to length and sewn closed at one end; the most common size for these bags will be 24″ wide by 40″ tall.

The applicable subheading for the sacks and bags will be 4602.90.0000, HTS, which provides for other (non-enumerated) basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601. The rate of duty will be 4.9%.

Articles classifiable under subheading 4602.90.0000, HTS, which are products of India or of Thailand, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:TC:TE 960304 RH
Category: Classification
Tariff No. 4602.90.0000

WILLIAM J. MALONEY, ESQ.
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

Re: Modification of NY 806263 concerning the classification of sheeting made of woven polypropylene strips; articles of plaiting materials; heading 4602; heading 4601.

DEAR MR. MALONEY:

On March 17, 1995, Customs issued New York Ruling Letter (NY) 806263, dated March 17, 1995, to you, on behalf of Ovasco Industries, concerning the classification of sheeting made of woven polypropylene strips coated with polypropylene film.

Customs classified the sheeting, style 5540, under subheading 4601.99.0000 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as plaits and similar products of plaiting materials, whether or not assembled into strips. Upon request of our New York office, we reviewed NY 806263 and have determined that the merchandise was incorrectly classified. The correct classification of the woven polypropylene strips is set forth in this letter.

The classification of the open-top bags or sacks set forth in NY 806263 is correct.

Facts:

A description of the sheeting made of woven polypropylene strips is set forth in NY 806263 as follows:

> It is a representative piece of style 5540 plaiting material, which will be imported in rolls or sheets of varying sizes. The product will be woven from white clear or colored polypropylene strips, and will be laminated on one side with a 20 micron polypropylene film.
>
> The strips exceeds millimeters in width.

Issue:

What is the classification of sheeting made of woven polypropylene strips coated with polypropylene film?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in their appropriate order. Customs seeks guidance in interpreting the terms of the heading in the Harmonized Commodity Description and Coding System Explanatory Notes (EN), which although not legally binding, am recognized as the official interpretation of the Harmonized System at the international level.

Heading 4601 is divided into two groups by a semicolon. It reads:

> Plaits and similar products of plaiting materials, whether or not assembled into strips; plaiting material; plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens).

Part (B) of the EN to heading 4601 states that the goods in the second part of the heading (after the semicolon) may be "reinforced or backed or lined with woven textile fabric or with paper."

Heading 4602 encompasses "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from goods of heading 4601; articles of loofah." The EN for heading 4602 state that it covers articles made up from products woven in sheet form, but does not cover articles of heading 4601 which "have acquired the character of finished articles by reason of being bound together in parallel stands or woven in sheet form (for example mats, matting or screens).

Customs held that sheets of woven polypropylene strips over 5 millimeters in width and continuously coated on one or both sides with a plastic film were classifiable under subheading 4602.90.0000, HTSUSA. See, New York Ruling Letters (NY) 860405, dated March 6, 1991 (imported woven polypropylene sheets with a clear plastic coating on one or both sides were classified in 4602.00.0000), and NY B81776, dated February 21, 1997 (woven polypropylene strips continuously coated on one side with a thin plastic film were classified in 4602.90.0000).

The plastic plaiting materials in the instant case are reinforced with plastic and are, therefore, precluded from classification in heading 4601. They are, nevertheless, articles (rolls or sheets) made up from plaiting materials of heading 4601, which have been further processed with a sheeting of plastic coating. The rolls or sheets are ready to be further made up into grain sacks, bags, etc. Accordingly, we find that they, like the sheets in NY 860405 and NY B81776, are classifiable under subheading 4602.

Holding:

The plaiting material, style 5540, imported in rolls or sheets is classifiable under subheading 4602.90.0000, HTSUSA, which provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Other." It is dutiable at the general column rate of duty at 4.2 percent *ad valorem*.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF GOB IMAGE ANALYZING SYSTEM

AGENCY: U.S. Customs Service, Department at the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a Gob Image Analyzing System. Customs invites comments on me correctness of the proposed revocation.

DATE: Comments must be received on or before October 31, 1997.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW, (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Attorney-Advisor, Tariff Classification Appeals Division, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) or the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a Gob Image Analyzing System. Customs invites comments on the correctness of the proposed revocation.

In NY A88137, issued on October 24, 1996, Customs ruled that a Gob Image Analyzing System was classifiable as an other optical measuring or checking instrument or appliance under subheading 9031.49.80, Harmonized Tariff Schedule of the United States (HTSUS). NY A88137 is set forth in "Attachment A" to this document.

Based upon a further examination of the merchandise and language set forth in Explanatory Note 90.32 and relative section and chapter notes of the HTSUS, Customs now finds that the the Gob Image Analyzing System is classifiable as an other automatic regulating or controlling instrument or apparatus under subheading 9032.89.60. HTSUS, and is precluded from classification under heading 9031, HTSUS.

Customs intends to revoke NY A88137 to reflect the proper classification of the Gob Image Analyzer System under subheading 9032.89.60, HTSUS. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters ruling 960259 revoking NY A88137, is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 11, 1997.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, October 24, 1996.

CLA–2–90:RR:NC:1:114 A88137
Category: Classification
Tariff No. 9031.49.8000

MR. PAUL S. ANDERSON
SONNENBERG & ANDERSON
200 South Wacker Drive
33rd Floor
Chicago, IL 60606

Re: The tariff classification of Gob Image Analyzing Systems from Sweden.

DEAR MR. ANDERSON:

In your letter dated September 27, 1996, on behalf of GeDevelop, Inc., you requested a tariff classification ruling.

The Gob Image Analyzing System (GIA) is non-contact measuring system for measurement of hot molten glass. The measurement of the gob of glass to determine its shape, temperature and weight is done immediately after the gob is sheared. Each gob is measured; the measurements provide information that is necessary for quality control.

The GIA System uses a camera which contains a charge coupled device. The camera is in an aluminum casing with a built-in cooler. The cooler cools the camera and at the same time heats the lens system to protect against condensation. The camera detects the radiation emitted by the gob of molten glass. The GIA has an integrated pyrometer, referred to as the GTM, which measures the gob temperature in different sections of the gob. There is also a gob weight control system, referred to as the GWC. The GWC measures the gob weight and adjusts the tube height or the plunger position to keep a constant gob weight.

The applicable subheading for the Gob Image Analyzing System will be 9031.49.8000, Harmonized Tariff Schedule of the United States (HTS). Which provides for measuring or checking instruments, appliances and machines; other optical instruments and appliances; other; other. The rate of duty will be 7.4 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling. contact National Import Specialist Barbara Kiefer at 212–488–5685.

ROGER SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

RR:TC:MM 960259 DWS
Category: Classification
Tariff No. 8524.99.90, 8537.10.90,
9026.80.60, and 9032.89.60

MR. PAUL S. ANDERSON
SONNENBERG & ANDERSON
200 South Wacker Drive
Chicago, IL 60606

Re: Reconsideration of NY A88137: Gob Image Analyzing System; Gob Image Analyzer; Gob Weight Controller; Chapter 90, Note 6(a): Explanatory Note 90.32; Chapter 90, Note 3: Section XVI, Notes 1(m) and 4; Chapter 85, Note 6; HQ 956962; 8501; 8423.30.00; 9031.49.80.

DEAR MR. ANDERSON:

This is in response to your letter of February 19 and September 2, 1997, on behalf of GeDevelop, Inc., requesting reconsideration of NY A88137, dated October 24, 1996, concerning the classification of a Gob Image Analyzing System under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The merchandise consists of a Gob Image Analyzing System (GIA System), which is composed of a Gob Image Analyzer (GIA) and a Gob Weight Controller (GWC). You claim that the primary function of the GIA System is to monitor and control the flow of molten glass to ensure that the optimal amount of molten glass is poured into a mold which will shape the end product.

A gob is a small amount of molten glass which is allowed to fall from the hearth to the molding machine which will shape the molten glass into a container. A flow of molten glass travels through a tube connected to the hearth. Gobs are formed by intermittently stopping the flow of molten glass. In the production of glass containers, the desired weight and shape of the gobs varies depending upon the desired end product. The weight of a gob directly relates to the flow of the molten glass through the tube. The flow of the molten glass is controlled by moving the tube through which it flows.

The GIA System measures the temperature, width, and speed of the gob as it is falling. From this data, it calculates the gob's weight end shape. The GIA System will then compare the gob's weight, shape, and temperature to prescribed parameters. If a gob's weight falls outside prescribed parameters, the GIA System will alter the flow of the molten glass by adjusting the tube height. This will, in turn, affect the weight of subsequent gobs. If a gob's shape or temperature falls outside prescribed parameters, the GIA System will notify the operator of the discrepancy by means of an audible or visual alarm.

The GIA consists of four main components: a camera consisting of sensors with a charge-coupled device (CCD) array housed in an aluminum case; a computer dedicated for use in the GIA System which includes a central processing unit (CPU), software, system disk, disk drive, monitor, and keyboard; a scale used to calibrate the GIA; and a gob-shape-change switch. The camera consists of a series of sensors capable of detecting the radiation emitted by a gob of molten glass. As the gob falls, it passes in front of the sensors. The light emitted from the hot piece of molten glass will illuminate part of the CCD array equal in size to the width of the falling gob. The sensors will also determine the speed of the falling gob as it enters and exits the path of the sensors. This information is converted into electronic data transmitted by cable to the computer. From this data, the computer will calculate the gob's weight. A pictorial representation of the falling gob, based on the data collected by the sensors, will be shown on the computer's color monitor. This information will be stored, on the computer's system disk and may be sent to the customer's main process control system to log and print the information. The GIA will then compare the characteristics of the falling gob to prescribed parameters. As the prescribed parameters depend upon the container being manufactured, they may be adjusted using the gob-shape-change switch.

The GIA also incorporates an optical pyrometer which measures the temperature of the falling gob. You state that the temperature of the falling gob is not a characteristic controlled in the manufacturing process, but is of interest to the engineers.

If the GIA discovers that the gob weight is not within the prescribed parameters, a signal will be sent to the GWC. The GWC will then adjust the tube height accordingly to adjust the flow of the molten glass through the tube thereby changing the gob weight. The GWC performs this function utilizing a motor which is not a part of the GIA System.

You request that we determine the correct classification of the GIA System, and the classification of the GIA and GWC as if they were imported separately. The holding in NY A88137 did not address the latter issue.

Issue:

Whether the GIA System is a functional unit classifiable under subheading 8423.30.00, HTSUS, as a scale for discharging a predetermined weight of material into a bag or container, including hopper scales, under subheading 9031.49.80, HTSUS, as an other optical measuring or checking instrument or appliance, or under subheading 9032.89.60, HTSUS, as an other automatic regulating or controlling instrument or apparatus.

Whether the GIA is a functional unit classifiable under subheading 8423.30.00, HTSUS, as a scale for discharging a predetermined weight of material into a bag or container, including hopper scales, or under subheading 9026.80.60, HTSUS, as an other instrument or apparatus for measuring or checking the flow, level, pressure, or other variables of liquids or gases.

Whether pre-installed software in the computer of the GIA and GIA System is separately classifiable under subheading 8524.99.90, HTSUS, as other recorded media for sound or other similarly recorded phenomena.

Whether the GWC is classifiable under subheading 8537.10.90, HTSUS, as an other board, panel, etc., for electric control of electricity.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The subheadings under consideration are as follows:

8423.30.00: [w]eighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery: constant-weight scales and scales for discharging a predetermined weight of material into a bag or container, including hopper scales.

The general, column one rate of duty for goods classifiable under this provision is 1.8 percent *ad valorem*.

8524.99.90: [r]ecords, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37: [o]ther: [o]ther: [o]ther: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 3.9 cents per meter squared of recording surface.

8537.10.90: [b]oards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: [f]or a voltage not exceeding 1,000 V: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 3.7 percent *ad valorem*.

9026.80.60: [i]nstruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 9014, 9015, 9028, or 9032; parts and accessories thereof: [o]ther instruments and apparatus: [o]ther: [o]ther.

The general, column one rate of duty for goods classifiable Under this provision is 2.8 percent *ad valorem*.

9031.49.80: [m]easuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts

and accessories thereof: [o]ther optical instruments and appliances: [o]ther: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 8.1 percent *ad valorem*.

9032.89.60: [a]utomatic regulating or controlling instruments and apparatus; parts and accessories thereof: [o]ther instruments and apparatus; [o]ther: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 3 percent *ad valorem*.

We will first deal with the classification of the entire GIA System under the HTSUS. In NY A88137, Customs held the GIA System to be classifiable under subheading 9031.49.80, HTSUS. You contend that the GIA System is classifiable as a functional unit under subheading 9032.89.60, HTSUS. Because heading 9031, HTSUS, excludes goods specified or included elsewhere in chapter 90, HTSUS, we must determine whether the GIA System is described under heading 9032, HTSUS.

Chapter 90, note 6(a), HTSUS, states that:

[h]eading 9032 applies only to:

(a) Instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory Note 90.32(I) (p. 1859) states:

(I) INSTRUMENTS AND APPARATUS FOR AUTOMATICALLY CONTROLLING THE FLOW, LEVEL, PRESSURE OR OTHER VARIABLES OF LIQUIDS OR GASES, OR FOR AUTOMATICALLY CONTROLLING TEMPERATURE

Automatic control apparatus for liquids or gases and apparatus for automatically controlling temperature form part of complete automatic control systems and consist essentially of the following devices:

(A) **A device for measuring** the variable to be controlled (pressure or level in a tank, temperature in a room, etc.); in some cases, a simple device which is sensitive to changes in the variable (metal or bi-metal rod, chamber or bellows containing an expanding liquid, float, etc.) may be used instead of a measuring device.

(B) **A control device** which compares the measured value with the desired value and actuates the device described in (C) below accordingly.

(C) **A starting, stopping** or **operating device.**

Apparatus for automatically controlling liquids or gases or temperature, within the meaning of Note 6(a) to this Chapter, consists of these three devices forming a single entity or in accordance with Note 3 to this Chapter, a functional unit * * *

Instruments and apparatus for automatically controlling the flow, level, pressure and other variables of liquids or gases or for automatically controlling temperature are connected to an appliance which carries out the orders (pump, compressor, valve, furnace burner, etc.) which restores the variable (e.g., liquid measured in a tank or temperature measured in a room) to the prescribed value, or which, in the case of a safety system, for instance, stops the operation of the machine or apparatus controlled. This appliance, generally remote controlled by a mechanical, hydraulic, pneumatic or electric control is to be classified in its own appropriate heading (pump or compressor: **heading 84.13** or **84.14;** valve: **heading 84.81,** etc.) * * *

Chapter 90, note 3, HTSUS, states that:

[t]he provisions of note 4 to section XVI apply also to this chapter.

Section XVI, note 4, HTSUS, states that:

[w]here a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

The GIA and the GWC, imported together as a unit, function together to meet the terms of Explanatory 90.32. The GIA acts both as a measuring device in that it measures the flow of molten glass (liquid) by calculating the weight of a falling gob or molten glass, and as a control device in that it compares the weight of the falling gob against prescribed parameters and transmits a signal to the GWC if adjustments need to made. The GWC acts as an operating device in that it adjusts the height of the tube through which the molten glass is flowing utilizing a motor. As slated in Explanatory Note 90.32, the motor (an "appliance which carries out the orders") is not a part of the GIA System and is separately classifiable under heading 8501, HTSUS.

The GIA System consists of individual components (GIA and GWC) intended to contribute together to a clearly defined function (automatically controlling the flow, weight, shape and temperature of liquids) covered by heading 9032, HTSUS. Therefore, the GIA System is functional unit described under subheading 9032.89.60, HTSUS, and it is precluded from classification under subheading 9031.49.80, HTSUS.

It has been suggested that the GIA System is a functional unit described under subheading 8423.30.00, HTSUS. Although the GIA does incorporate a scale and part of the function of the GIA is to calculate the weight of a gob, we find that function of the GIA as a whole is not encompassed by heading 8423, HTSUS. It is stated in the supplied literature that the GIA monitors temperature, shape, and weight, and it is our understanding that all three factors must meet certain specification requirements for each different end product. Also, to be classifiable under subheading 8423.30.00, HTSUS, the predetermined weight of material must be discharged in a bag or container it is our position that, in this case, a mold is not a container for heading 8423, HTSUS, purposes, and we note that none of the containers involved in any Customs ruling concerning subheading 8423.30.00, HTSUS, is similar to a mold.

> Section XVI, note 1(m), HTSUS, states that:
>
> [t]his section does not cover:
>
> (a)–(ij) xxx
>
> (m) Articles of chapter 90.

Even if the GIA System were described under heading 8423, HTSUS, because it is an article of chapter 90, HTSUS, it would be precluded from classification in chapter 84, HTSUS.

We will now determine the clarification of the GIA imported separately. Because the principal function of the GIA is to monitor and control the flow of molten glass, it is our position that it consists of individual components (CCD camera, computer, scale, gob-shape-change switch, and optical pyrometer) intended to contribute to a clearly defined function covered by heading 9026 (measuring or checking the flow, weight, shape, and temperature of liquids), HTSUS.

For the same reasons as with the GIA System, the GIA is precluded from classification under heading 8423, HTSUS. Therefore, the GIA, when imported separately, meets the terms of heading 9026, HTSUS, and is classifiable under subheading 9026.80.60, HTSUS.

Chapter 85, note 6, HTSUS, states that:

> [r]ecords, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are entered with the apparatus for which they are intended.

Therefore, any pre-installed software in the computer of the GIA and GIA System is separately classifiable under subheading 8524.99.40, HTSUS. *See* HQ 956962, dated September 13, 1994.

As it is our understanding that the GWC functions as a programmable controller, it is classifiable under subheading 8537.10.90, HTSUS.

Holding:

The Gob Image Analyzing System is a functional unit classifiable under subheading 9032.89.60, HTSUS, as an other automatic regulating or controlling instrument or apparatus.

When imported separately, the Gob Image Analyzer is a functional unit classifiable under subheading 9026.80.60, HTSUS, as an other instrument or apparatus for measuring or checking the flow, level, pressure, or other variables of liquids or gases.

Any pre-installed software in tie computer of the GIA and GIA System is separately classifiable under subheading 8524.99.40, HTSUS, as other recorded media for sound or other similarly recorded phenomena.

When imported separately, the Gob Weight Controller is classifiable as a functional unit under subheading 8537.10.90, HTSUS, as an other board, panel, etc., for electric control of electricity.

Effect on Other Rulings.

NY A88137 is revoked.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

CHANGE OF ADDRESS FOR OFFICE OF REGULATIONS AND RULINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of change of address.

SUMMARY: The Office of Regulations and Rulings of the U.S. Customs Service is relocating on or about September 26–29, 1997, to the Ronald Reagan Building and International Trade Center at 1300 Pennsylvania Avenue, NW, Washington, D.C. Consequently, all correspondence directed to the Office of Regulations and Rulings, including ruling requests and comments regarding pending Customs regulatory proposals, should be sent to the new address indicated below. Further, anyone wishing to view comments on regulatory projects will need to come to the new address. The phone numbers of the Office of Regulations and Rulings will also change. This document gives notice of the new address and phone numbers.

FOR FURTHER INFORMATION CONTACT: Joseph Clark, Regulations Branch, (202) 482–6970.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Office of Regulations and Rulings (OR&R) of the U.S. Customs Service is relocating on or about September 26–29, 1997, to the the Ronald Reagan Building and International Trade Center at 1300 Pennsylvania Avenue, NW. Anyone wishing to submit comments on a regulatory proposal or submit a ruling request to the United States Customs Service should address the correspondence to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229, with either the Regulations Branch or other appropriate branch name inserted into the address.

VIEWING COMMENTS

As of September 29, 1997, anyone wishing to view comments that were addressed to the Regulations Branch of Customs on a proposal published in the Federal Register should come to the address set forth in the preceding paragraph. It is highly recommended that, until all offices at Customs have relocated, you call Joseph Clark at (202) 927–2340 before coming to schedule an appointment to view the comments.

PHONE NUMBERS

The phone numbers for the Office of Regulations and Rulings as of September 26, 1997 are as follows:

Assistant Commissioner, OR&R	927–0760
Operational Oversight Division	927–0760
International Agreements Staff	927–2255
International Trade Compliance Division	927–2244
Regulations Branch	927–2340
Penalties Branch	927–2344
Entry Procedures and Carriers Branch	927–2320
Intellectual Property Rights Branch	927–2330
Value Branch	927–2399
Disclosure Law Branch	927–2333
Commercial Rulings Division	927–2244
Duty and Refund Determination Branch	927–2077
Textile Branch	927–2380
Special Classification and Marking Branch	927–2310
General Classification Branch	927–2388

Dated: September 15, 1997.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Published in the Federal Register, September 19, 1997 (62 FR 49296)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
R. Kenton Musgrave
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Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

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Clerk

Raymond F. Burghardt

Decisions of the United States Court of International Trade

NOTE: This is to advise that Slip Op. 97–124 is not available for publication at this time due to the confidential nature of the document. A public version of the document will be released and published in the Customs Bulletin when available.

(Slip Op. 97–124)

GULF STATES TUBE DIVISION OF QUANEX CORP., PLAINTIFF *v.* UNITED STATES AND U.S. DEPARTMENT OF COMMERCE, DEFENDANTS, AND DALMINE S.P.A., DALMINE USA INC., AND TAD USA, INC., DEFENDANT-INTERVENORS

Consolidated Court No. 95–09–01125

(Dated August 29, 1997)

(Slip Op. 97–125)

SIGMA CORP., U.V. INTERNATIONAL, SOUTHERN STAR, INC., CITY PIPE AND FOUNDRY, INC., LONG BEACH IRON WORKS, INC., OVERSEAS TRADE CORP., D & L SUPPLY CO., DEETER FOUNDRY, INC., ALHAMBRA FOUNDRY, INC., ALLEGHENY FOUNDRY CO., BINGHAM & TAYLOR DIVISION, VIRGINIA INDUSTRIES INC., CAMPBELL FOUNDRY CO., CHARLOTTE PIPE & FOUNDRY CO., EAST JORDAN IRON WORKS, INC., LEBARON FOUNDRY INC., MUNICIPAL CASTINGS, INC., NEENAH FOUNDRY CO., OPELIKA FOUNDRY CO., INC., PINKERTON FOUNDRY INC., TYLER PIPE INDUSTRIES, INC., U.S. FOUNDRY & MANUFACTURING CO., AND VULCAN FOUNDRY, INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND D & L SUPPLY CO., DEETER FOUNDRY, INC., ET AL., DEFENDANT-INTERVENORS

Consolidated Court No. 91–02–00154

(Dated September 8, 1997)

ORDER

TSOUCALAS, *Senior Judge:* In accordance with the decision (July 7, 1997) and mandate (Aug. 29, 1997) of the United States Court of Ap-

peals for the Federal Circuit, Appeal Nos. 95–1510 and 96–1037, remanding this case with instructions, it is hereby

ORDERED that the portion of the decision of the Court in *Sigma Corp. v. United States*, 19 CIT ____, 890 F. Supp. 1077 (1995) (Slip Op. 95–102), upholding the Department of Commerce, International Trade Administration's ("Commerce") methodology in calculating the freight component of foreign market value is vacated; and it is further

ORDERED that Commerce recalculate constructed foreign market value for the 1987–89 consolidated administrative review using a methodology that does not overvalue total freight expense by double-counting ocean freight and foreign inland freight; and it is further

ORDERED that Commerce report the results of this remand to the Court within 60 days of this order.

(Slip Op. 97–126)

SIGMA CORP., SOUTHERN STAR, INC., CITY PIPE AND FOUNDRY, INC., LONG BEACH IRON WORKS, INC., OVERSEAS TRADE CORP., GUANGDONG METALS & MINERALS IMPORT & EXPORT CORP., U.S. FOUNDRY & MANUFACTURING CO., ALHAMBRA FOUNDRY, INC., ALLEGHENY FOUNDRY CO., BINGHAM & TAYLOR DIVISION, VIRGINIA INDUSTRIES INC., CHARLOTTE PIPE & FOUNDRY CO., DEETER FOUNDRY INC., EAST JORDAN IRON WORKS, INC., LEBARON FOUNDRY INC., MUNICIPAL CASTINGS, INC., NEENAH FOUNDRY CO., OPELIKA FOUNDRY CO., INC., TYLER PIPE INDUSTRIES, INC., AND VULCAN FOUNDRY, INC., PLAINTIFFS, AND U.V. INTERNATIONAL, PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND GUANGDONG METALS & MINERALS IMPORT & EXPORT CORP. AND U.S. FOUNDRY & MANUFACTURING CO., ET AL., DEFENDANT-INTERVENORS

Consolidated Court No. 92–04–00283

(Dated September 8, 1997)

ORDER

TSOUCALAS, *Senior Judge:* In accordance with the decision (July 7, 1997) and mandate (Aug. 29, 1997) of the United States Court of Appeals for the Federal Circuit, Appeal Nos. 95–1509 and 96–1036, remanding this case with instructions, it is hereby

ORDERED that the portion of the decision of the Court in *Sigma Corp. v. United States*, 19 CIT ____, 888 F. Supp. 159 (1995) (Slip Op. 95–95), upholding the Department of Commerce, International Trade Administration's ("Commerce") methodology in calculating the freight component of foreign market value is vacated; and it is further

ORDERED that Commerce recalculate constructed foreign market value for the 1989–90 administrative review using a methodology that does

not overvalue total freight expense by double-counting ocean freight and foreign inland freight; and it is further

Ordered that, in accordance with *D & L Supply Co. v. United States*, 113 F.3d 1220 (Fed. Cir. 1997), the portion of the decision of the Court in *Sigma Corp. v. United States*, 17 CIT 1358, 841 F. Supp. 1275 (1993) (Slip Op. 93–238), upholding Commerce's reliance on Guangdong Metals & Minerals Import & Export Corporation's ("Guangdong") invalidated dumping margin as the "best information available" in its determination of an "all others" rate to be charged against the non-responsive Chinese exporters (*i.e.*, all Chinese exporters except Guangdong) in the 1989–90 administrative review is vacated; and it is further

ORDERED that Commerce determine an "all others" rate to be charged against the non-responsive Chinese exporters without using Guangdong's invalidated dumping margins; and it is further

ORDERED that the portion of the decision of the Court in *Sigma*, 17 CIT 1358, 841 F. Supp. 1275, upholding Commerce's determination of the surrogate foundry overhead component of constructed foreign market value is vacated; and it is further

ORDERED that Commerce obtain additional information from its representatives in Pakistan with regard to the size of the "large Lahore-based foundry," and whether the overhead for that foundry is comparable to the overhead that would be experienced by a foundry the size of Guangdong's foundries and, if necessary based on this information, recalculate the surrogate foundry overhead component of constructed foreign market value; and it is further

ORDERED that commerce report the results of this remand to the Court within 60 days of this order.

(Slip Op. 97–127)

BÖHLER-UDDEHOLM CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND ALLEGHENY LUDLUM STEEL CORP., WASHINGTON STEEL CORP., AND G.O. CARLSON, INC. DEFENDANT-INTERVENORS

Consolidated Court No. 95–08–01024

[Commerce remand determination affirmed in part and remanded in part.]

(Dated September 10, 1997)

O'Donnell, Byrne & Williams, (R. Kevin Williams and *Michael A. Johnson)* for plaintiff.

Frank W. Hunger, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Randi-Sue Rimerman), Carlos A. Garcia*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, United States Department of Commerce, of counsel, for defendant.

Collier, Shannon, Rill & Scott, PLLC, (Paul C. Rosenthal, John B. Brew and *Jeffrey S. Beckington)* for defendant-intervenors.

OPINION

RESTANI, *Judge:* On November 14, 1996, this court remanded the Department of Commerce, International Trade Administration's two letter rulings in *Stainless Steel Plate from Sweden*.[1] *Böhler-Uddeholm Corp. v. United States*, 946 F. Supp. 1003, 1004 (Ct. Int'l Trade 1996). The letter rulings reversed the Treasury Department's 1976 post-finding scope ruling and held that two grades of stainless steel plate sold by plaintiff Böhler-Uddeholm Corporation under the trade names UHB Stavax ("Stavax") and UHB Ramax ("Ramax") were within the scope of the 1973 antidumping finding issued in *Stainless Steel Plate from Sweden*, 38 Fed. Reg. 15,079, 15,079 (Treasury Dep't 1973).

The court noted in its decision ordering remand that while Commerce may amend a determination when it has "'utilized a legally improper method in making a determination or when the original determination contains an error of inadvertence or mistake,'" Commerce could not determine that Treasury erred in its 1976 post-finding ruling or correct that error by applying the current standard used in scope determinations.[2] *Böhler-Uddeholm Corp.*, 946 F. Supp. at 1007, 1009–10. Rather, the court held that Commerce must apply the scope determination standard in effect in 1976,[3] which was the totality of the circumstances test applied in the classification case *United States v. Carborundum Company*, 536 F.2d 373, 377 (C.C.P.A. 1976). *Id.* at 1008.[4] Moreover, "the current threshold test of finding ambiguity in the documentary description of the merchandise as set forth under 19 C.F.R. § 353.29(i)(1) before resorting to *Diversified Products* or *Carborundum* type factors is not applicable under the 1976 standards." *Id.* at 1009.

On remand, the court instructed Commerce to:

> apply the 1976 standards to determine whether Treasury erred in its post-finding ruling. In reviewing Treasury's actions Commerce must interpret ambiguous actions in accordance with the presumption of administrative legality and regularity. Moreover, at this stage, Commerce may not reweigh the evidence. If a court would find sufficient evidence to sustain Treasury's decision, so must Commerce. Second, if Treasury erred, Commerce may correct the

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[1] The two letter rulings were *Stainless Steel Plate from Sweden*, (Dep't Commerce 1995) (final scope ruling and mem., flat rolled products)(Def.–Intervenor's App., Tab 1) and *Stainless Steel Plate from Sweden*, (Dep't Commerce 1995) (final scope ruling and mem., forged products)(Pl.'s App., Tab 2) (hereinafter "*November 1995 Determination*").

[2] Under the current scope determination standard, Commerce must first determine if the description of the merchandise is itself dispositive. 19 C.F.R. § 353.29(i)(1). Only if the description of the product is ambiguous will Commerce consider the four *Diversified Products* factors codified in 19 C.F.R. § 353.29(i)(2). The four *Diversified Products* factors are: (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; and (4) the channels of trade. 19 C.F.R. § 353.29(i)(2); *Diversified Prods. Corp. v. United States*, 6 CIT 155, 162, 572 F. Supp. 883, 889 (1983).

[3] The court has assumed and no one has argued that the law as to scope determinations changed between the time of the original investigation in 1973 and the time of the scope determination in 1976.

[4] The seven factors considered in the totality of the circumstances test include

> The general physical characteristics of the merchandise, the expectation of the ultimate purchasers, the channels, class or kind of trade in which the merchandise moves, the environment of the sale (i.e., accompanying accessories and the manner in which the merchandise is advertised and displayed), the use, if any, in the same manner as merchandise which defines the class, the economic practicality of so using the import, and the recognition in the trade of this use.

Carborundum Co., 536 F.2d at 377 (citations omitted).

antidumping scope determination by applying the law in effect in 1976.

Id. at 1009–10. In its remand determination, Commerce concluded that Treasury erred in its 1976 post-finding ruling. *Final Results of Redetermination Pursuant to Court Remand, Böhler-Uddeholm Corp. v. United States, Slip Op. 96–184 (Nov. 14, 1996)* at 3 (hereinafter "*Remand Results*"). In addition, Commerce determined that Treasury applied the standard articulated in *Acrylic Sheet from Japan*[5] and not the *Carborundum* standard in making scope determinations. *Id.* at 5. Applying the *Acrylic Sheet* standard, Commerce found that Stavax and Ramax, whether flat-rolled or forged, are within the scope of the 1973 antidumping finding on stainless steel plate from Sweden. *Id.* at 2–3. This matter is now before the court following Commerce's remand determination.

DISCUSSION

I. *Remand Determination that Treasury Erred in its 1976 Post-Finding Ruling:*

Commerce's remand determination concluded that Treasury's post-finding ruling was unlawful on a number of bases.

> First, the Department has determined that, at least with respect to flat-rolled Stavax and Ramax, Treasury could have reached a determination by applying a plain reading of the scope language under the finding on stainless steel plate from Sweden. Second, the Department has determined that if Treasury could not resolve, with a plain reading, whether flat-rolled or forged Stavax and Ramax were within the scope of the finding, the appropriate test which Treasury should have applied is the test set forth in its unpublished scope determination on the 1976 finding of dumping of Acrylic Sheet from Japan. The Department has also determined that, in reaching its 1976 scope ruling, Treasury used an impermissible bright line test and also failed to correctly apply the factors in that test. Our analyses reveal that, regardless of whether its bright line test was permissible, Treasury unlawfully altered the scope of the finding. In addition, the Department has determined that if Treasury had applied a plain reading of the scope language or used the *Acrylic Sheet* test, its determination that Stavax and Ramax fall outside the scope of the finding on stainless steel plate would not have been supported by substantial evidence on the record. Finally, our analyses have revealed that, however one characterizes the analysis employed by Treasury in its 1976 determination, the test applied in that ruling was neither an appropriate application of a plain reading of the description, the *Acrylic Sheet* analysis, the *Diversified* analysis, nor even the *Carborundum* analysis. Therefore, it was plainly incorrect.

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[5] The *Acrylic Sheet* standard is articulated in an unpublished letter response to an inquiry regarding the status of certain products under *Finding of Dumping of Acrylic Sheet from Japan*, 41 Fed. Reg. 36,497 (Treasury Dep't 1976). *See Acrylic Sheet from Japan*, (Treasury Dep't 1978) (letter ruling); Def.'s App., at 46–47 (hereinafter "*Acrylic Sheet*"). It is a restricted version of the *Carborundum* standard as it is limited to five of the *Carborundum* factors: (1) physical characteristics of the merchandise, (2) uses for which the merchandise is imported and the economic practicality of so using the import, (3) the expectation of the ultimate purchasers, and (4) the channels of trade in which the merchandise moves. Factor (2) includes two *Carborundum* factors.

Remand Results, at 8. Moreover, Commerce found that the 1976 ruling itself indicates that Treasury:

> (1) did not include a complete reference to the scope of the antidumping finding; (2) ignored the fact that Stavax and Ramax clearly fall within the physical characteristics contained in the description of stainless steel plate in the petition * * *, failing to even mention this important fact; (3) relied heavily on the fact that the petition failed to include a price comparison of the specific grades of steel in question; (4) emphasized its conclusion that the uses for which the merchandise was imported did not fall within the illustrative (not exhaustive) list contained in the petition and; (5) erroneously determined that Stavax and Ramax were not covered by the finding simply because such products were not part of the fair value price-to-price comparisons.

Id. at 9–10 (internal citation omitted). The court need not discuss all of the reasons relied upon by Commerce to sustain this section of the remand results as even one finding of error supported by substantial evidence would make Treasury's ruling unlawful.

In its remand determination, Commerce concluded that under either the *Acrylic Sheet* test or the *Carborundum* test, Treasury's ruling was unlawful because Treasury did not consider all of the required factors. *See id.* at 8, 16. In reaching this determination, Commerce relied solely on the language of the 1976 ruling. *See id.* at 16. The post-finding ruling is implicitly divided into three sections. *See* Treasury's Mem. on Stainless Steel Plate from Sweden (Oct. 29, 1976); Pl.'s App., Tab 5, at 66–67 (hereinafter "Post-Finding Ruling Letter"). The first section details the materials appended to Böhler-Uddeholm's memoranda. *Id.* at 66. Here, Böhler-Uddeholm described Stavax and Ramax as tool steel with a specific chemical composition. *Id.* The second section contains Treasury's description of stainless steel plate, defined by physical dimension and ability to resist corrosion and abrasion.[6] *Id.* The third section contains Treasury's analysis and conclusion. *Id.* at 66–67. In this section, Treasury stated:

> [N]one of the aforementioned grades of steel were enumerated in the complainant's price comparison. Inasmuch as the complaint failed to address itself to those varieties of steel, and based on the materials appended to your memorandum, it is our opinion that UHB 904L plate, UHB Stavax and UHB Ramax, manufactured by [Böhler–]Uddeholm Steel Company, Sweden, do not come within the purview of T.D. 73–157. We note that UHB 904L plate does not fall within the stainless steel family given the industry standards.

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[6] In this section of the Post-Finding Letter Ruling, Treasury defined its interpretation of the scope of the 1973 antidumping finding as follows:

> Stainless steel plate, the merchandise that is subject to the finding of dumping (T.D. 73–157), are flat[–] rolled or forged steel plates over 10 inches in width and 3/16 inch or more in thickness, renowned for their resistance to corrosion and abrasion.

Post-Finding Letter Ruling, Pl.'s App., Tab 5, at 66. In its remand results, Commerce correctly found that Treasury's definition of the scope was incomplete as it failed to mention the chemical composition of stainless steel plate, a factor that was expressly mentioned in the 1972 petition and relied upon by the Tariff Commission in its injury determination. Treasury's recitation in the Post-Finding Letter Ruling of Böhler-Uddeholm's own characterization of its products which included a reference to chemical composition does not by itself support a contrary finding.

> We also note that UHB Ramax and UHB Stavax are stainless plastic mold steels rather than stainless steel plate. In addition, Customs did not consider these varieties of steel during the course of the fair value investigation.

Id.

Commerce's conclusion in this regard is supported by substantial evidence and thus is affirmed. Treasury's 1976 post-finding ruling mentioned facts relevant to a proper scope determination, but did not integrate these facts into its analysis section. The analysis section does not address the factors of either *Acrylic Sheet* or *Carborundum* such as physical characteristics, expectations of purchasers, or channels of trade of stainless steel plate. *See* Post-Finding Ruling Letter; Pl.'s App., Tab 5, at 66–67. Instead, "every sentence in the paragraph relates to Treasury's analysis of the use requirement it added or the requirement added by Treasury that Stavax or Ramax fall under one of the listed grades." *Remand Results*, at 16; *see also* Post-Finding Ruling Letter; Pl.'s App., Tab 5, at 66–67. Plaintiff counters Commerce's findings by suggesting that Commerce cannot determine twenty years later the degree of weight given to each factor and speculates that those factors not explicitly mentioned may have been implicitly considered by Treasury. As plaintiff has not directed the court to any record evidence to support its argument or to contradict Commerce's finding, this argument is unpersuasive.

Moreover, Commerce further supported its remand determination that Treasury did not consider all of the relevant factors by concluding that Treasury's post-finding scope ruling was based, in significant part, on the fact that Stavax and Ramax were not listed in the petition as examples of price comparisons for stainless steel plate and that this reliance constituted an impermissible "bright line test."[7] *Remand results,* at 15–16 (quoting *Böhler-Uddeholm Corp.*, 946 F. Supp. at 1008).

The court agrees with Böhler-Uddeholm that the evidence does not indicate the relative weight Treasury assigned to this factor and thus does not indicate its use as a "bright line test." The court, however, sustains this aspect of the remand results as the finding that Treasury based its ruling, at least in part, on the omission of Stavax and Ramax's grades of steel from the petition's list of price comparisons is supported by substantial evidence. In fact, Treasury's ruling included only one expressly articulated reason for excluding Stavax and Ramax – that the grades of steel in question were not enumerated in the petition. *See* Post-Finding Ruling Letter; Pl.'s App., Tab 5, at 66–67. Treasury's con-

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[7] The court stated in the remand opinion that there is no requirement that the petition provide a complete description or list of models, grades or uses of the merchandise subject to the antidumping allegation. *See Böhler-Uddeholm Corp.*, 946 F. Supp. at 1008. Thus, the court stated that if Treasury considered the illustrative product examples of the subject merchandise in the petition to provide a bright line test, then Treasury erred. *Id.*

sideration of the list as complete in determining the scope of the class or kind of merchandise was thus unlawful.[8]

In addition to contesting each finding of error, plaintiff also argues that Commerce disregarded the court's instructions to

> interpret ambiguous actions in accordance with the presumption of administrative legality and regularity. Moreover, at this stage, Commerce may not reweigh the evidence. If a court would find sufficient evidence to sustain Treasury's decision, so must Commerce.

Böhler-Uddeholm Corp., 946 F. Supp. at 1009–10. The court notes the significance of these instructions because not just legally, but practically, a decision three years after the original determination should be presumed correct. More than twenty years after the fact, Commerce should find error reluctantly.[9] In its remand determination, however, Commerce stated that while it disagrees with the court's instruction to apply the presumption, it

> [n]onetheless, in accordance with the Court's statement * * * we have examined the record to determine whether Treasury's 1976 determination was supported by substantial evidence on the record at that time, rather than impose our own judgement or examine Treasury's ruling under standards currently in effect which were not in effect in 1976.

Remand Results, at 2. In addition, plaintiff has not directed the court's attention to any evidence indicating that Commerce did not interpret Treasury's actions in accordance with the presumption of administrative regularity. Rather, plaintiff argues merely that if the presumption had been applied the result would have been different. This is not a sufficient basis to reject Commerce's remand determination.

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[8] In addition to contesting the individual findings of error, plaintiff argues that Commerce ignored the court's remand instructions by applying the *Diversified Products* threshold test specifically rejected by the court in its remand opinion. The court agrees with plaintiff that Commerce's finding of error by applying a "plain reading" of the scope language is merely an application of the threshold test under a different name. *See Böhler-Uddeholm Corp.*, 946 F. Supp. at 1009. As this contradicts the court's ruling, we do not rely on this finding to sustain this aspect of the remand results.

Moreover, plaintiff argues that Commerce applied the *Acrylic Sheet* factors instead of the *Carborundum* factors. The distinction between the *Acrylic Sheet* test and that of *Carborundum* is irrelevant to this section of the remand determination. Commerce explicitly stated that "however one characterizes the analysis employed by Treasury in its 1976 determination, the test applied in that ruling was neither an appropriate application of a plain reading of the description, the *Acrylic Sheet* analysis, the *Diversified* analysis, nor even the *Carborundum* analysis." *Remand Results*, at 8. Plaintiff has not presented any evidence that the findings of error relied upon to sustain this aspect of the remand determination would be invalid under an application of the 1976 standards as articulated by the court.

[9] This is not the first instance where the court has instructed Commerce not to substitute its own judgment for that of Treasury. In *Alsthom Atlantique v. United States*, 787 F.2d 565, 571 (Fed. Cir. 1986) the court provided similar instruction to Commerce in section 751 reviews. There, Alsthom Atlantique argued that in order for Commerce to perform the review, it must first determine that there was an existing dumping finding that included the product in question and to reach that determination by reviewing every fact on the record *de novo*. The court rejected this argument by stating

> [w]hile it is true that the ITA must determine whether there was an existing dumping finding that included the item, once the ITA determines that the Treasury included the item under its original antidumping determination, the ITA's inquiry into that issue ceases. Alsthom's assertion, if accepted, would lead the ITA into an impossible task of reviewing *de novo* each and every Treasury antidumping determination to determine whether Treasury correctly included the article in question within the scope of its underlying antidumping determination. In a section 751 review, the ITA does not have the power to substitute its judgment for Treasury's when Treasury has specifically included an item within its antidumping determination.

Id. The same practical and legal reasons driving the court's decision in *Alsthom Atlantique* apply to Commerce's review of a Treasury scope determination made 20 years ago. To substitute its own judgment for that of Treasury would lead Commerce into an impossible and unwise task of reviewing *de novo* agency decisions that were presumed to be in accordance with law and supported by substantial evidence when completed twenty years ago.

II. *Commerce's Application of the 1976 Scope Determination Standard:*

The court's remand opinion stated that if Treasury erred, Commerce may correct the antidumping scope determination by applying the law in effect in 1976. *Böhler-Uddeholm Corp.*, 946 F. Supp. at 1010. The court further instructed Commerce that in 1976, Treasury applied a totality of the circumstances test which included, but was not limited, to the seven factors listed in *Carborundum* when making scope determinations.[10] *Id.* at 1008. On remand, Commerce determined that Treasury did not apply the test articulated by the court, but instead applied the standard articulated in *Acrylic Sheet*. *Remand Results*, at 4. Applying the *Acrylic Sheet* standard, Commerce determined that Stavax and Ramax, both forged and flat-rolled, are within the scope of the antidumping finding on stainless steel plate from Sweden. *Id.* at 19. Plaintiff argues that Commerce's remand results are not in accordance with law and are unsupported by substantial evidence because: (1) Commerce applied the *Acrylic Sheet* factors instead of the *Carborundum* factors as directed by the court; (2) Commerce's *Acrylic Sheet* analysis relied on its November 2, 1995 *Diversified Products* analysis; and (3) the remand results are not supported by substantial evidence. For the reasons that follow, we remand this issue to Commerce.

First, Commerce did not apply the scope determination standard articulated by the court in its remand opinion. The court clearly stated in *Böhler-Uddeholm*, that in 1976 Treasury applied the totality of the circumstances test articulated in *Carborundum* when making scope determinations. 946 F. Supp. at 1008. In the remand results, however, Commerce determined that in 1976, Treasury applied the four factor standard articulated in *Acrylic Sheet* which included only five of the seven *Carborundum* factors: "1) [t]he physical characteristics of the merchandise; 2) [t]he uses for which the merchandise is imported and the economic practicality of so using the import; 3) [t]he expectation of the ultimate purchasers; and 4) [t]he channels of trade in which the merchandise moves." *Remand Results*, at 5. Moreover, Commerce explicitly noted that "Treasury clearly did not purport to consider either the environment of the sale or the recognition in the trade of the use for the merchandise in its analysis in *Acrylic Sheet*," both factors included in the *Carborundum* test. *Id.*

The determination in *Acrylic Sheet* does not conclusively establish that the restricted approach of *Acrylic Sheet* was applied in all scope determinations in 1976. In fact, the court is not aware of another Treasury decision applying that standard. Instead, the evidence suggests that Treasury could consider additional *Carborundum* factors as appropri-

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[10] The court noted in *Böhler-Uddeholm* that Treasury considered the following seven specific, but not exclusive, factors in its scope determinations:

> [1] general physical characteristics of the merchandise, [2] expectation of the ultimate purchasers, [3] the channels, class or kind of trade in which the merchandise moves, [4] environment of the sale (i.e., accompanying accessories and the manner in which the merchandise is advertised and displayed), [5] the use if any in the same manner as merchandise which defines the class, [6] the economic practicality of so using the import, and [7] the recognition in the trade of this use.

Böhler-Uddeholm Corp., 946 F. Supp. at 1008 n.17 (citing *Carborundum Co.*, 536 F.2d at 377).

ate in each case. The language of the *Acrylic Sheet* determination itself describes the four factors as "essential factors" to be used as "guidelines", but does not explicitly limit Treasury to considering only these factors. *See Acrylic Sheet*; Def.'s App. at 46–47. Moreover, in *Kyowa Gas Chemical Industry Co. v. United States*, 7 CIT 138, 140, 582 F. Supp. 887, 889 (1984), the court considered the *Acrylic Sheet* finding and noted that the factors listed in the determination are "[*a*]*mong* the factors considered" by the agency making the scope determination. *Id.* (emphasis added)(citing *Parts for Self-Propelled Bituminous Paving Equipment from Canada*, 46 Fed. Reg. 47,806, 47,807 (Dep't Commerce 1981)(clarification of scope)(applying same factors in 1981 scope determination)).[11] Thus, in 1976 Treasury looked at as many of the *Carborundum* factors as were appropriate to a particular case. By restricting its analysis to only the four factors listed in *Acrylic Sheet*, and not considering whether the additional factors listed in *Carborundum* were appropriate in this case, Commerce did not comply with the court's remand instructions.[12]

Moreover, the court must reject the remand results because they relied on the *Diversified Products* analysis of forged Stavax and Ramax conducted by Commerce in November 1995. On remand, Commerce explained its methodology for correcting the scope determination by stating that

> [it] ha[s] re-examined the scope issue under the *Acrylic Sheet* standard. We note that this standard is very similar to the *Diversified Products* standard codified at 19 C.F.R. Sec. 353.29(i)[(2)], which we applied in our November 2, 1995 determination that Stavax and Ramax, when forged, are properly included within the scope of the finding. Because the *Diversified* and *Acrylic Sheet* analyses are so similar and we have already analyzed Stavax and Ramax under [*Diversified Products*], it is appropriate, for these [] remand results, to provide a brief explanation of our *Acrylic Sheet* analysis herein.[13]

Remand Results, at 16–17. While Commerce explicitly relied in part on its 1995 determination for only two *Acrylic Sheet* factors, use and expectations of the purchasers, it is unclear if it conducted a new analysis or

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[11] The court in *Kyowa Gas* stated that

> [a]mong the factors considered by the ITA are the general physical characteristics of the product; the expectations of the ultimate purchaser; the channels of trade in which the product is sold; the manner in which the product is advertised and displayed; and the ultimate use of the product.

Id. (citing *Parts for Self-Propelled Bituminous Paving Equipment from Canada*, 46 Fed. Reg. at 47,807). In a footnote immediately following this statement, the court noted that "[i]n determining whether the 1976 antidumping finding on Acrylic Sheet from Japan encompassed [the product in question], the Customs Service in 1978 considered *these* criteria 'essential factors' to be used as 'guidelines' in making rulings on specific products." *Id.* at n.2 (emphasis added).

The criteria listed in *Kyowa Gas* include an additional factor, the manner in which the product is advertised, that is not present in the *Acrylic Sheet* determination itself. Combining the factors listed in the *Acrylic Sheet* determination with those listed in *Kyowa Gas*, only one *Carborundum* factor is implicitly excluded, the recognition in the trade of the product's use.

[12] Commerce's statement in the remand results that they would reach the same conclusion under any of the tests, including *Carborundum*, *Acrylic Sheet*, or *Diversified Products* does not apply to this determination. *Remand Results*, at 8. Commerce made this statement in the context of finding an error in Treasury's 1976 ruling. It was not made to justify Commerce's subsequent application of *Acrylic Sheet* instead of *Carborundum* to correct the original error. *See id.*

[13] The remand results state that Commerce previously analyzed Stavax and Ramax under *Acrylic Sheet*. *Remand Results*, at 17. The court assumes that Commerce intended to state that its previous analysis was under *Diversified Products*.

merely reworded the *Diversified Products* analysis for the other factors. *See id.* at 17–18.

The extent of Commerce's reliance on the 1995 determination, however, need not be decided as any reliance would be unlawful. A proper *Diversified Products* analysis would compare the product in question to the entire class or kind of merchandise subject to the antidumping finding. Here, Commerce primarily relied on a comparison of forged Stavax and Ramax to flat-rolled Stavax and Ramax, instead of to the class or kind of merchandise, stainless steel plate. Passages from Commerce's *November 1995 Determination* for each *Diversified Product* factor demonstrate the unlawful comparison. *See November 1995 Determination*; Pl.'s App., Tab 2, at 32–41. In its analysis of use, for example, Commerce stated:

> Based on an analysis of the ultimate use of Stavax and Ramax, the Department concludes that Stavax and Ramax, when forged, have the same ultimate use as merchandise within the scope of the antidumping finding on stainless steel plate from Sweden, *such as flat[–] rolled Stavax and Ramax*.

November 1995 Determination; Pl.'s App., Tab 2, at 39 (emphasis added).[14]

Moreover, Commerce's articulated reasoning for including Stavax and Ramax under the *Diversified Products* test further supports the conclusion that Commerce primarily compared forged Stavax and Ramax to flat-rolled Stavax and Ramax. First, Commerce implicitly relied on its original determination that flat-rolled Stavax and Ramax were within the scope of the antidumping finding under the threshold dispositiveness test of 19 C.F.R. § 353.29(i)(1). *See November 1995 Determination*; Pl.'s App., Tab 2, at 30. Second, Commerce found that for many factors of the *Diversified Products* test, Böhler-Uddeholm could not distinguish between flat-rolled and forged Stavax and Ramax. *See generally, id.* at 33–41. Thus, as flat-rolled Stavax and Ramax were already within the scope of the antidumping finding and forged Stavax and Ramax were not distinguishable, Commerce concluded forged Sta-

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[14] The responses of defendant and defendant-intervenors do not address the narrow argument raised by plaintiff. Commerce in its remand results responds to Böhler-Uddeholm's argument by noting that the November 1995 *Diversified Products* analysis addressed each of the four *Diversified Products* factors. *See Remand Results*, at 23–24. Moreover, Commerce stated that although the *Diversified Products* analysis was undertaken after determining that flat-rolled Stavax and Ramax were within the scope of the finding, that "[n]evertheless, our *Diversified Products* analyses involved a comprehensive examination of forged Stavax and Ramax which included our examination of more than simply the 'forged' characteristics of the product." *Id.* at 24. This response does not address whether Commerce compared forged Stavax and Ramax only to flat-rolled Stavax and Ramax.

Defendant-intervenors note that in the remand results Commerce did not rely solely on the November 1995 *Diversified Products* analysis. Instead, Commerce explicitly relied on the November analysis only for two of the factors, use and expectations of the purchaser. Moreover, for those two factors, Commerce provided additional evidence to support its conclusions beyond the evidence supporting the *November 1995 Determination*. This too clearly does not address the threshold issue of whether Commerce simply compared forged to flat-rolled Stavax and Ramax. The court does not reach the issue of whether the *Acrylic Sheet* analysis is supported by substantial evidence even without relying on the *1995 November Determination*.

vax and Ramax must also be within the class or kind of merchandise.[15] *See id.* Commerce's reasoning suggests a comparison only to flat-rolled Stavax and Ramax and not to stainless steel plate.

Even if Commerce did not limit its comparison of forged Stavax and Ramax solely to flat-rolled Stavax and Ramax, its reasoning in the *November 1995 Determination* is flawed under the 1976 standards. Under the 1976 standards, Treasury did not apply the current threshold dispositiveness test codified at 19 C.F.R. § 353.29(i). *Böhler-Uddeholm Corp.*, 946 F. Supp. at 1009. Thus, Commerce's reliance on the inclusion of flat-rolled Stavax and Ramax under the threshold test as a means of concluding that forged Stavax and Ramax are also included, is not valid under the 1976 standards.

In addition, the *November 1995 Determination* relied on evidence not on the agency record in 1976. As this case concerns an error correction as to a twenty-year old scope ruling, permitting a new scope ruling based on new evidence and new policies would allow a fundamental change in the original definition of the class or kind of merchandise.[16] This is not permitted. In its *November 1995 Determination*, Commerce relied on new evidence in its analysis of the expectations of purchasers by referring to evidence discussed in the physical characteristics factor. *November 1995 Determination*; Pl.'s App., Tab 2, at 38. As support for its findings on the physical characteristics of Stavax and Ramax, Commerce relied in part on letters from the domestic industry written in 1994 and 1995, affidavits from 1995, and technical sources from 1985 and 1990. *Id.* at 34–37. Commerce was instructed to apply the 1976 standards using the evidence before Treasury in 1976; it was not instructed simply to provide the same analysis the court previously rejected.[17]

Thus, the court remands this case to Commerce to apply the totality of the circumstances test as articulated in *Carborundum* by considering as many of the seven factors as are appropriate. Commerce is limited to the record before Treasury in 1976. Moreover, Commerce may not rely on (1) its prior determination that flat-rolled Stavax and Ramax are within the scope of the antidumping finding based on the *Diversified Products* threshold test, (2) the November 1995 *Diversified Products* analysis for

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[15] The above summary of Commerce's reasoning is specifically articulated in the analysis of three of the four *Diversified Products* factors. In its analysis of the expectations of purchasers factor Commerce stated

> First, the Department notes, as does the domestic industry in its rebuttal comments, that [Böhler-] Uddeholm fails to differentiate between forged and flat[-]rolled Stavax and Ramax in discussing the expectations of the purchasers * * *. Moreover, [Böhler-]Uddeholm's product brochures for Stavax and Ramax do not differentiate between forging or flat rolling. [Böhler-]Uddeholm has submitted nothing that demonstrates that a purchaser of forged Stavax and Ramax has expectations that differ from those of a purchaser of flat[-]rolled Stavax and Ramax, or other stainless steel plate within the scope of the finding.
>
> Based on an analysis of the expectations of purchasers of Stavax and Ramax, the Department concludes that forging versus flat[-]rolling does not alter the purchaser expectations for Stavax and Ramax. The purchaser expectations for Stavax and Ramax, when forged, are the same as for merchandise within the scope of the antidumping finding on stainless steel plate from Sweden, such as flat[-]rolled Stavax and Ramax.

Id. at 38. *See also id.* at 39 ("[Böhler-]Uddeholm fails to differentiate between forged and flat[-]rolled Stavax and Ramax in discussing the ultimate use of the product."); *Id.* at 40 ("[Böhler-]Uddeholm fails to differentiate between forged and flat-rolled Stavax and Ramax in discussing the channels of trade. The domestic industry argues that this is because Stavax and Ramax, whether forged or flat-rolled, are sold through the same channels of trade.").

[16] Commerce may consider post-1976 evidence only for the purpose of ascertaining what facts were known up to the time of the 1976 decision.

[17] As Commerce applied the wrong standard while correcting Treasury's error, the court does not reach the issue of whether under that incorrect standard Commerce's findings were supported by substantial evidence.

forged Stavax and Ramax, or (3) the *Acrylic Sheet* analysis provided in the first remand results.

Remand results are due within 30 days. Any objections shall be filed 11 days thereafter. Response, if any, is due within 5 days thereafter.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C97/73 9/4/97 DiCarlo, J.	Amerex of California Corp.	94–09–00499	6202.93.50 29.5%	6202.93.45 7.6%	Agreed statement of facts	Newark Certain ladies' reversible jackets Style No. 55166
C97/74 9/4/97 DiCarlo, J.	Hayward & Associates	96–11–02513	7013.39.30 30%	A7010.90.20 Duty free	Agreed statement of facts	Boston Unfinished circular glass lids for use as a cover for cooking vessels

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